

### **39-1-1. Militia -- How constituted -- Persons exempted.**

(1) All able-bodied citizens, and all able-bodied persons of foreign birth who have declared their intention to become citizens, who are 18 years of age or older and younger than 45 years of age, who are residents of this state, constitute the militia, subject to the following exemptions:

- (a) persons exempted by laws of the United States;
- (b) persons exempted by the laws of this state;
- (c) all persons who have been honorably discharged from the army, air force, navy, or volunteer forces of the United States;
- (d) active members of any regularly organized fire or police department in any city or town, but no member of the active militia is relieved from duty because of his joining any volunteer fire company or department;
- (e) judges and clerks of courts of record, state and county civil officers holding office by election, state officers appointed by the governor for a specified term of office, ministers of the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails, conductors, brakemen, flagmen, engineers and firemen of railways, and all other employees of railways actually employed in train service; and
- (f) idiots, lunatics, and persons convicted of infamous crime.

(2) All exempted persons, except those enumerated in Subsections (1)(a) through (f), are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after they have voluntarily enlisted in the National Guard of this state.

Amended by Chapter 324, 2010 General Session

### **39-1-2. Militia divided into two parts.**

(1) The militia of this state shall be divided into two parts: the National Guard and the unorganized militia.

(2) The National Guard shall consist of:

- (a) a joint forces headquarters commanded by the adjutant general and authorized a general officer as deputy commander;
- (b) a department for army commanded by a general officer; and
- (c) a department for air commanded by a general officer.

(3) The numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline of the National Guard shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state.

(4) The unorganized militia shall consist of all members of the militia not members of the National Guard.

Amended by Chapter 65, 2005 General Session

### **39-1-3. Governor commander in chief -- Powers and duties.**

The governor by virtue of his office shall be commander in chief of the National Guard and of the unorganized militia, and of any portions of the unorganized militia which may hereafter be organized. He shall be empowered and authorized to issue all

such orders, rules and regulations necessary to conform the Utah National Guard to Title 32 of the United States Code in its organization, government, discipline, maintenance, training, equipment, and regulations. He shall appoint and commission all officers and select all warrant officers, subject to the provisions of Title 32 of the United State Code; provided, that any such appointee failing to receive federal recognition after having been so notified by the National Guard Bureau, shall revert to status occupied before such appointment. He shall determine and fix the home station and location of the various units of the Utah National Guard. He shall provide armories, warehouses, maintenance and repair shops, hangars, small arms, artillery and aircraft ranges, campsites, concentration areas, training facilities, military reservations and arsenals as required for organizations of the Utah National Guard; and shall furnish suitable offices, or office space for regular army personnel assigned to duties with the Utah National Guard; the expenses of which may be paid out of the state military appropriations.

Amended by Chapter 22, 1989 General Session

**39-1-4. Staff of commander in chief.**

(1) The staff of the commander in chief shall consist of the adjutant general, the deputy commander of the joint forces headquarters, assistant adjutant general for army and the assistant adjutant general for air and any other members chosen from the officers of the Utah National Guard or active officers of the United States Armed Forces detailed on duty with the militia of the state.

(2) The adjutant general and one other general officer shall serve with pay from the state.

Amended by Chapter 65, 2005 General Session

**39-1-5. Governor may call guard into active service -- Authority.**

(1) The governor may order into active service the National Guard or the unorganized militia or portions of either as he finds necessary.

(2) If it is necessary to order into active service any members of the unorganized militia, the governor may adopt methods he finds most expedient for that purpose, and may prescribe and enforce uniform rules for the conduct of drafts, appoint all officers necessary, and fix the amount of their pay, not to exceed the rate of pay prescribed for the National Guard.

Amended by Chapter 210, 1988 General Session

**39-1-7. Muster of unorganized militia.**

Members of the unorganized militia called into the service of this state shall be mustered into service for such a period, not to exceed the period of one enlistment in the National Guard, as the governor shall deem necessary. Militia so mustered into service shall be organized into units as provided by the rules and regulations governing the regular army of the United States, or as otherwise provided by law.

No Change Since 1953

**39-1-8. Governor may proclaim martial law.**

Whenever the militia or any portion thereof, is called into active service, the governor may, by proclamation, declare all or any part of any county, city or town in which the troops are serving to be under martial law, and when the militia shall be on active service as herein provided, the commanding officer thereof and his subordinates may cooperate with the civil authorities or take entire charge of the situation as in the judgment of the commanding officer the exigencies of the case may require.

No Change Since 1953

**39-1-9. National Guard subject to call by United States.**

(1) The National Guard of this state is at all times subject to the call of the President of the United States. When called into the service of the United States, it is governed by the applicable laws and military regulations of the United States.

(2) The National Guard and its members shall attend drills, encampments, and maneuvers as the president directs.

Amended by Chapter 210, 1988 General Session

**39-1-10. Unorganized militia in service, how governed.**

All unorganized militia called into service shall be governed as herein provided for the National Guard, unless otherwise provided by law.

No Change Since 1953

**39-1-12. Adjutant general -- Appointment -- Term.**

(1) There shall be one adjutant general appointed by the governor. The adjutant general is chief of staff and holds office for a term of six years, unless terminated by resignation, disability, or for cause as determined by a military court or court-martial.

(2) The person appointed to the office shall be a citizen of Utah and meet the requirements provided in Title 32, United States Code. He shall be a federally recognized commissioned officer of the National Guard of the United States with no fewer than 10 years commissioned service in the Utah National Guard. Active service in the armed forces of the United States may be included in this requirement, if the officer was a member of the Utah National Guard when he entered that service. An officer is no longer eligible to hold the office of adjutant general after becoming 64 years of age.

Amended by Chapter 115, 2011 General Session

**39-1-12.5. Convening authority for military court.**

(1) The governor or the adjutant general of the state is the convening authority for any military court in the state, and upon receipt of charges, as outlined in the Utah Manual for Military Courts, may:

- (a) dismiss any charges;
  - (b) forward charges to a subordinate commander for disposition; or
  - (c) refer charges to a military court for trial.
- (2) The military court shall be convened under the Utah Manual for Military Courts.

Amended by Chapter 110, 1993 General Session

**39-1-13. Adjutant general -- As disbursing and property officer.**

The adjutant general shall be the disbursing and property officer for the state, expending state funds allocated to the National Guard through the Division of Finance according to established procedures.

Amended by Chapter 22, 1989 General Session

**39-1-14. Adjutant general -- Drawing vouchers for property damage.**

The adjutant general shall, with the approval of the governor, draw vouchers on the state appropriation for the National Guard, payable to the United States, to cover any damage to the United States property charged to the state, when such damage shall have been properly adjudged to be payable by the state.

No Change Since 1953

**39-1-15. Adjutant general -- Disposition of unserviceable property.**

(1) All military property of the state, which after proper inspection shall be found unserviceable, shall, under the direction of the governor, be disposed of by the adjutant general at public or private sale as he may consider advisable.

(2) (a) If the inspecting officer decides that the value of the property described in Subsection (1) exceeds \$50 in value, the sale in accordance with Subsection (1) shall be made after notice is published:

(i) 10 days before the sale in a newspaper published in the county where the sale will occur; and

(ii) in accordance within Section 45-1-101 10 days before the sale.

(b) If such unserviceable property shall be found by the inspecting officer to be of no actual value, it shall be destroyed under the direction of the adjutant general.

Amended by Chapter 388, 2009 General Session

**39-1-16. Adjutant general -- Rendering accounts.**

The adjutant general shall from time to time, render a true account to the governor of the sales made by him, and, under the direction of the governor, expend the proceeds of the same for other military property.

No Change Since 1953

**39-1-17. Adjutant general -- Custodian of military trophies.**

The adjutant general shall have charge of, and shall carefully preserve, the colors, flags, guidons and military trophies of war belonging to the state, and shall not allow the same to be loaned out or removed from their proper places of deposit, and shall also be the custodian of and preserve all military documents and records of every nature, which may be placed in his charge, relating to the Indian wars within the state or wars in which the United States has participated.

No Change Since 1953

**39-1-18. Director of joint staff -- Assistant adjutant general for the army -- Assistant adjutant general for air -- Commander, land component command -- Chief of staff for air -- Officer for permanent duty as personnel officer.**

(1) There is authorized a director of joint staff.

(a) The adjutant general, with the approval of the governor, may detail the joint forces headquarters deputy commander.

(b) The director of joint staff shall be a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all the time during office hours of the military department to the duties of the office.

(2) There is authorized an assistant adjutant general for the army and an assistant adjutant general for air.

(a) The adjutant general with the approval of the governor may detail the assistant adjutant general for the army or the assistant adjutant general for air for permanent duty.

(b) The assistant adjutant general for the army and the assistant adjutant general for air shall be federally recognized field grade commissioned officers of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all the time during office hours of the military department to the duties of the office.

(3) There is authorized a commander, land component command.

(a) The adjutant general, with the approval of the governor, may detail the commander, land component command.

(b) The commander, land component command shall be a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all the time during office hours of the military department to the duties of the office.

(4) There is authorized a chief of staff for air.

(a) The adjutant general, with the approval of the governor, may detail the chief of staff for air.

(b) The chief of staff for air shall be a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years of military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Air National Guard of the United States. The officer shall:

(i) hold office at the pleasure of the adjutant general; and

(ii) devote all the time during office hours of the military department to the duties of the office.

(5) The adjutant general, with the approval of the governor, may detail one officer or retired officer of the Utah National Guard for permanent duty as the personnel officer.

(a) The officer shall be a federally recognized commissioned officer, or former federally recognized commissioned officer, of the Utah National Guard with not less than three years military service in the armed forces of a state or of the United States, at least one of which shall have been commissioned in the Utah National Guard.

(b) The officer shall hold office at the pleasure of the adjutant general.

(c) The duties of the personnel officer shall be as the adjutant general may direct, to include the normal duty of the staff G-1.

(d) The officer shall devote all the time during office hours of the military department to the duties of the office.

(e) A former federally recognized retired officer may serve in this capacity while awaiting a finding of indispensability.

(6) The adjutant general may detail an officer without the required commissioned service in the Utah National Guard to a position in this section only with written approval of the governor.

Amended by Chapter 215, 2012 General Session

### **39-1-19. Clerical assistance.**

The adjutant general may employ such clerical assistance as shall be necessary to perform the duties of his office and such clerical assistance shall also be available for use in any state office held by the adjutant general.

No Change Since 1953

### **39-1-21. Adjutant general -- Salary.**

The adjutant general shall:

(1) receive a salary established by the governor within the salary range fixed in Title 67, Chapter 22, State Officer Compensation; and

(2) devote all of the adjutant general's time during the office hours of the military department to the duties of the office.

Amended by Chapter 369, 2012 General Session

**39-1-22. Caretakers.**

The adjutant general may when necessary, with the approval of the governor, employ such custodians, assistants and common labor as may be necessary to maintain the property, both state and federal, under his care in a proper state of repair.

No Change Since 1953

**39-1-23. Seal of adjutant general.**

The seal of the adjutant general shall be circular in form, containing an inner circle; within the inner circle shall be a shield with "Utah" impressed thereon, and between the circles shall be impressed "National Guard, Adjutant General."

No Change Since 1953

**39-1-24. Duties of assistant adjutants general.**

(1) The assistant adjutant general detailed for permanent duty shall serve in the office of the adjutant general, performing duties assigned him by the adjutant general. In the absence or disability of the adjutant general he shall perform the duties of the adjutant general, unless otherwise delegated by the adjutant general to another qualified officer. The assistant adjutant general detailed for permanent duty shall serve with pay from the state.

(2) The assistant adjutant general not detailed for permanent duty in the office of the adjutant general shall serve without pay from the state and perform duties assigned him by the adjutant general.

Amended by Chapter 215, 2012 General Session

**39-1-25. Property and fiscal officer of the United States for Utah.**

(1) The governor shall designate an officer of the National Guard, subject to the approval of the Department of the Army or the Department of the Air Force, as property and fiscal officer of the United States for Utah.

(2) The officer shall:

(a) have had actual service in the forces of the United States or the National Guard and have knowledge of army or air administration;

(b) receive and account for all funds and property belonging to the United States in the possession of the National Guard;

(c) make the returns and reports concerning the funds as may be required by the National Guard Bureau; and

(d) render, through the National Guard Bureau, accounts of federal funds entrusted to the officer for disbursement as may be required by the Treasury Department.

Amended by Chapter 336, 2011 General Session

**39-1-26. Assistant quartermaster-general.**

The adjutant general may have an assistant quartermaster-general, of grade

designated by the governor, who shall perform such duties as may be specified by the adjutant general.

No Change Since 1953

**39-1-28. Loss of property -- Liability.**

Whenever it shall have been finally determined in the manner provided by law or regulation by action of the departments of the army or the air force, that the loss, damage or destruction of federal property for which any officer shall be responsible or accountable shall have been occasioned by or through the failure of any officer to perform the duties required of him by law or regulation; or when it shall have been finally determined, in the case of state property, by the adjutant general that any state property for which any officer shall be accountable or responsible shall have been lost, damaged or destroyed by or through the failure of any officer to perform the duties required of him by law or regulation, such determination by the departments of the army or the air force or adjutant general, as the case may be, shall be prima facie evidence against such officer and his sureties of such failure, and the record of such determination, properly authenticated under the seal of the adjutant general, shall be admissible in evidence for the purpose of establishing such failure and such determination in any action against any officer and/or his sureties.

Amended by Chapter 61, 1963 General Session

**39-1-29. Organization of National Guard controlled by federal law.**

The organization of the National Guard, including the composition of all units thereof, shall be such as is or may hereafter be prescribed for this state by federal law. The location of units including headquarters shall, when not otherwise prescribed by federal law, be fixed by the governor on the recommendation of the adjutant general.

No Change Since 1953

**39-1-30. Officers of National Guard -- Commissions.**

(1) All officers of the National Guard shall be appointed by the governor, subject to the approval of the National Guard Bureau, or subject to approval as prescribed by the laws of the United States or related rules or regulations governing the National Guard.

(2) An officer may not be commissioned unless he successfully passes tests, both physical and mental, as prescribed by the National Guard Bureau, and unless he has taken the oath prescribed by the laws of the United States, is a citizen of the United States, and has been selected from one of the following classes:

- (a) officers or enlisted members of the National Guard;
- (b) officers on the reserve or unassigned list of the National Guard;
- (c) officers active or retired;
- (d) former officers of the United States Army, Air Force, Navy, Marine Corps, or National Guard;
- (e) graduates from the service of the United States military, air, and naval



academies, or graduates of schools, colleges, and universities where a course in military science, as prescribed by the National Guard Bureau, is taught under the supervision of an officer of the regular army or regular air force; and

(f) for the technical branches and staff corps or departments, other civilians as are especially qualified for that duty.

(3) However, officers appointed to staff corps or departments, or other staff positions, including officers of the pay, inspection, subsistence, and medical departments, shall have had previous military experience, and hold their positions until they shall have reached 64 years of age, unless separated prior to that time by resignation, disability, or for other causes to be determined by a military court, court-martial, or other legally organized board convened for that purpose. Vacancies among these officers shall be filled by appointment as provided in this section.

Amended by Chapter 22, 1989 General Session

**39-1-31. Commissions to officers -- Relative rank.**

Commissions shall be issued under the seal of the adjutant general, signed by the governor and countersigned by the adjutant general. They may be vacated in such manner as is now or shall hereafter be provided by law in regard to commissions of the regular army or regular air force and the National Guard of the United States. The relative rank of officers of the same grade shall be determined by length of service in that grade, whether continuous or not, and if the length of service of two or more officers is the same, their rank shall be determined by lot.

Amended by Chapter 61, 1963 General Session

**39-1-32. National Guard -- Enlistment -- Qualifications -- Discharge.**

Any male between the ages of 18 and 45 years, who is a citizen of the United States or who has declared his intention to become a citizen, not prohibited by the laws of the state or of the United States, may be enlisted in the National Guard, subject to such physical and other examinations as may be prescribed by the National Guard Bureau. All persons herein named who shall enlist in the National Guard shall take and subscribe the oath provided by the laws of the United States, and upon so doing shall become members of the National Guard for such period as may be prescribed by the laws of the United States, unless sooner discharged. Enlisted men may be discharged as provided by the laws of the United States and regulations of the National Guard Bureau.

Amended by Chapter 61, 1963 General Session

**39-1-33. Noncommissioned officers.**

The appointment and reduction of noncommissioned officers shall be made in the same manner as in the regular army or the regular air force of the United States.

Amended by Chapter 61, 1963 General Session

**39-1-34. Excuse from drill -- Furloughs and leaves of absence.**

Unless otherwise provided by the laws of the United States or the regulations of the National Guard Bureau, the commanding officer of any troop, battery, group, squadron or other unit shall have power, for good and sufficient reason, to excuse members of his organization from attendance at drill; he shall also have power to grant furloughs and leaves of absence, by and with the consent of the adjutant general.

Amended by Chapter 61, 1963 General Session

**39-1-35. State employees in National Guard -- Care of dependents when called into service.**

If the National Guard of this state is called into the service of the state, the state shall provide for the dependents of state employees who are enlisted members of the National Guard so called into service. The Board of Examiners shall cause an examination to be made into the merits of all cases of alleged dependency, and upon finding that any mother, father, grandfather, grandmother, wife, sister, brother or child of such member of the National Guard, or any or either of them, are dependent upon such member for support, the Board of Examiners shall determine the amount to be paid by the state to any such dependent, and shall cause the state auditor to draw his warrant on the state treasurer for such sum in favor of such specific and determined dependents, payable out of any amounts available for military purposes or for the maintenance and support of the National Guard. If there are not sufficient funds available to pay for the necessary support of all the dependents determined and specified by the board of examiners, the funds available shall be prorated among the dependents specified by the Board of Examiners. The Board of Examiners in specifying the amounts to be paid to such dependents may provide for a payment on a weekly or monthly basis and on such conditions as it may deem best in each particular case.

Amended by Chapter 174, 1981 General Session

**39-1-36. Reserve member of armed forces -- Leave of absence from employment -- Liability of employers.**

(1) Any member of a reserve component of the armed forces of the United States who pursuant to military orders enters active duty, active duty for training, inactive duty training, or state active duty shall upon request be granted a leave of absence from employment, but for no more than five years.

(2) Upon satisfactory release from the training or from hospitalization incidental to the training, the member shall be permitted to return to the prior employment with the seniority, status, pay, and vacation the member would have had as an employee if he had not been absent for military purposes.

(3) Any employer who willfully deprives an employee who is absent as a member under Subsection (1) of any of the benefits under Subsection (2) or discriminates in hiring for any employment position, public or private, based on membership in any reserve component of the armed forces, is guilty of a class B misdemeanor.

Amended by Chapter 15, 1989 General Session

**39-1-37. Military duties.**

Participation in public ceremonies and parades and other duties in the service of the state shall be deemed military duties of the National Guard, and when participated in by the National Guard, or any portion thereof, under instructions of the commander in chief, the expenses and pay incident to the service of the state shall be allowed by the proper auditing officers from the state appropriation for the support of the militia.

No Change Since 1953

**39-1-38. Regulations and forms.**

The commander in chief may establish and prescribe regulations and forms not inconsistent with law, or regulations governing the National Guard promulgated by the President of the United States, as he considers proper for the use, government, and instruction of the National Guard, and to carry into full effect the provisions of related law. The regulations and forms shall be revised as necessary, and shall be promulgated in orders and compiled as advisable for the information of the National Guard.

Amended by Chapter 210, 1988 General Session

**39-1-38.5. Utah Manual for Military Courts to be issued -- Military court jurisdiction.**

(1) The adjutant general shall issue a Utah Manual for Military Courts that includes the Utah Code of Military Justice, and shall set forth the procedures, authority, and organization for convening a military court in the state, conducting a pretrial investigation, and conducting post-conviction military court and appellate processes.

(2) The military court shall have jurisdiction of misdemeanors and infractions. Each offense shall be punishable by incarceration in a county jail for no longer than one year, a fine of not more than \$2,500, forfeiture of pay of not more than \$2,500, detention of pay equivalent to three months' pay for a period not to exceed one year, arrest in quarters for officers, restriction to specified limits for enlisted members, extra duty for not more than 60 consecutive days, reprimands, reduction of enlisted members to the lowest enlisted grade, a bad conduct discharge for enlisted members or dismissal for officers, or any combination of these.

(3) (a) The military court may order any person adjudged guilty of a criminal activity to make restitution to any person or entity injured as a result of the criminal activity.

(b) "Criminal activity" means any offense under Title 39, Chapter 1 or 6, of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without admission of committing the criminal conduct.

(4) The military court may:

- (a) suspend any portion of its sentence and impose conditions of probation;
- (b) revoke suspension; or
- (c) issue any orders necessary under Section 39-6-61 to execute any portion of

the sentence that has been suspended.

(5) The military court may not impose combined forms of punishment that exceed confinement for a period of one year or a fine of \$2,500. This sentencing limitation does not apply to restitution ordered by the military court.

Amended by Chapter 198, 1996 General Session

**39-1-39. Orders for duty -- How served.**

(1) Orders for duty may be oral or written. Written orders shall be promulgated by the governor or the adjutant general.

(2) Officers and enlisted members may be ordered for duty by:

- (a) stating the substance of the order;
- (b) reading the order to the person ordered;
- (c) delivering a copy of the order to the person;
- (d) leaving a copy at his last-known place of abode or business; or
- (e) mailing it to the nearest post office.

(3) The order may be given by an officer or noncommissioned officer.

(4) If any enlisted member ordered to duty fails to appear for duty, the officer or noncommissioned officer giving notice or order shall make a return containing the name of the person ordered and the time, place, and manner of the order, if required by the officer issuing the order. The return may be verified by his oath, which may be administered by any commanding officer. The verified returns are evidence of the facts stated in the return on the trial of any person.

Amended by Chapter 15, 1989 General Session

**39-1-40.5. Utah Code of Military Justice -- Procedures -- Jurisdiction.**

(1) Title 39, Chapter 6, is adopted as the Utah Code of Military Justice, which may also be referred to as the UCMJ.

(2) The UCMJ sets forth offenses which, if committed by personnel of the Utah National Guard serving under this title or Title 32, United States Code, are punishable as the Utah Military Court directs under regulations made and published under the UCMJ.

(3) The Utah Military Court is a court of the state, convened under orders issued by the governor or the adjutant general. Judges of the court may issue summons, executions, and other process. The process shall be served by county sheriffs, at the expense of the state.

(4) Judgments for fines or forfeitures may be docketed in the same manner as district court judgments in each county, and without costs.

(5) Appeals shall be taken to the Court of Appeals.

(6) Sentences of the Utah Military Court shall be served in a county jail. Costs incurred by the county shall be paid out of the General Fund of the state.

(7) Certification as counsel for prosecution or defense, or as a judge of the Utah Military Court, is under orders issued by the adjutant general, and is limited to attorneys who are members of the Utah State Bar and are serving as judge advocates in the Utah National Guard.

(8) A defendant may retain, at no cost to the state or National Guard, civilian counsel to represent him before the Utah Military Court.

(9) The Utah Military Court may impose fines not exceeding \$2,500, restitution to victims, statutory surcharges, and may issue all writs and judgments for the execution of any of them.

(10) When consistent with the Utah Manual for Military Courts, the Utah Rules of Criminal Procedure apply in Utah Military Courts.

Amended by Chapter 198, 1996 General Session

**39-1-41. Discharge or dismissal.**

A sentence of dismissal from the service or discharge imposed by a military court may not be executed until reviewed by the state judge advocate and approved by the governor.

Amended by Chapter 287, 2008 General Session

**39-1-41.5. Authority of military court judges -- Payment of witnesses.**

(1) Judges of military courts may:

(a) issue a warrant to arrest an accused person and bring him before the court for trial, when the person has failed to obey a prior summons to appear before the court, and a copy of the charge or information has been delivered to the accused with the summons;

(b) issue subpoenas and subpoenas duces tecum, and enforce by attachment the attendance of witnesses and the production of books and papers;

(c) sentence for a refusal to be sworn or to answer as provided in actions before civil courts; and

(d) issue process in any county within the state.

(2) Witnesses shall be paid in the same manner as in district courts.

Amended by Chapter 198, 1996 General Session

**39-1-44. Members of military courts exempt from liability.**

No action or proceeding shall be prosecuted or maintained against a member of a military court or officer, or person acting under its authority or reviewing its proceedings, on account of the imposition, approval or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, process or mandate of a military court.

No Change Since 1953

**39-1-45. Jurisdiction presumed.**

The jurisdiction of the courts established by this chapter shall be presumed, and the burden of proof shall rest on any person attacking such jurisdiction in any action or proceeding.

No Change Since 1953

**39-1-46. Arsenal -- Military supplies -- Loss.**

The governor is hereby authorized to provide an arsenal for the storage of arms, equipment and military supplies. Military supplies shall be issued upon requisition of the officer requiring the same. Military supplies for the respective organizations shall be issued to and receipted for by the commanding officer thereof, who shall be responsible to the state for the care and preservation of the same. Commanding officers shall be responsible to this state for the money value of all property issued to them, which may be lost by reason of carelessness and negligence upon their part.

Amended by Chapter 63, 1953 General Session

**39-1-47. Military property exempt from civil process.**

All military property issued to or owned by members of the National Guard shall be exempt from all civil process.

No Change Since 1953

**39-1-50. Military court -- Concurrent prosecutorial jurisdiction with county or district attorney.**

(1) The county attorney or district attorney as appropriate under Sections 17-18-1 and 17-18-1.7 of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with the Utah Military Court to prosecute the accused person at the expense of the county.

(2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney or district attorney has reviewed and declined to prosecute the offense.

Amended by Chapter 38, 1993 General Session

**39-1-51. Pay and benefits of National Guard members.**

(1) When called into the service of the state and not in the service of the United States, the members of the National Guard shall:

(a) receive the same pay and allowance as members of the regular army or regular air force of like rank and length of service;

(b) elect to:

(i) receive medical, dental, disability, or death benefits equal to those received by full-time, permanent state employees; or

(ii) maintain any medical, dental, disability, or death benefits already in place; and

(c) receive one ration per day.

(2) The state may not make payments to members of the National Guard for service for which the United States government makes payment.

Amended by Chapter 85, 2008 General Session

**39-1-52. Encampments.**

Encampments of the National Guard shall be such as may be provided for by the National Guard Bureau under authority of Congress. The cost of maintenance, transportation and subsistence, and other expenses of such encampments and maneuvers, shall not be paid by the state, but as provided for by Congress.

Amended by Chapter 61, 1963 General Session

**39-1-53. Military units not to leave state.**

No military unit of the Army or Air National Guard, unless called into the service of the United States, shall leave the state with arms and equipment without the consent of the commander in chief, and any person causing any unit to so leave the state is guilty of a misdemeanor.

Amended by Chapter 61, 1963 General Session

**39-1-54. Privilege from arrest or citation -- Exceptions.**

(1) The members of the National Guard are privileged from arrest or citation by civil authorities during their attendance at drill parades or encampments, or in going to and returning from any of these activities.

(2) This privilege does not extend to arrest or citation for:

- (a) treason;
- (b) any felony;
- (c) breach of the peace;
- (d) operation of a vehicle in a reckless manner or while under the influence of any drug or alcohol; or
- (e) offenses which under state law are class A misdemeanors or greater.

Repealed and Re-enacted by Chapter 210, 1988 General Session

**39-1-56. Execution of a judgment imposing a fine -- Disposition of fines.**

(1) (a) When the sentence of a military court includes a fine and the sentence has been approved by the officer ordering the court, the adjutant general shall issue a warrant for the collection of the fine, directed to the sheriff or any constable of the county where the person against whom the fine is imposed resides.

(b) The officer executing the warrant shall collect the fine in the same manner as he is authorized to collect debts in civil suits. He shall make returns to the adjutant general within 20 days after receiving the warrant.

(c) Warrants for the collection of fines imposed by military courts shall be issued by the officer appointing the military court.

(2) All fines collected under this chapter and the regulations governing the National Guard of the United States shall be paid to the state treasurer for the credit of the state General Fund, unless otherwise provided by law.

Amended by Chapter 15, 1989 General Session

**39-1-58. Vacating officer commissions -- Placement of officers in reserves.**

(1) Commissions of officers of the National Guard may be vacated upon resignation or absence without leave for three months pursuant to the sentence of a military court.

(2) (a) Officers of the National Guard rendered excess by the disbandment of their organization shall be placed in the National Guard reserve.

(b) Officers may, upon their own application, be placed in the reserve.

Amended by Chapter 359, 2004 General Session

**39-1-59. Compensation for injury or death.**

If any officer or enlisted person of the National Guard is wounded, injured, or otherwise acquires a disability, or is killed or dies of wounds or injuries received while serving on state active duty, under orders of competent authority and not as a result of the person's own misconduct, the person, the surviving spouse, children, or any dependent relatives, shall receive from the state relief as the Legislature determines. However, in these cases the member, surviving spouse, children, or any dependent relatives, upon investigation by a board of inquiry appointed by the commander in chief, the findings and recommendations of which shall be filed with the state auditor for the action of the Board of Examiners, shall receive temporary compensation from the state, out of funds appropriated for the maintenance of the National Guard, as determined by the Board of Examiners until the next regular session of the Legislature. This compensation may not exceed the rates of pay provided for officers and enlisted persons in this chapter.

Amended by Chapter 366, 2011 General Session

**39-1-60. Laws and regulations of United States control.**

(1) The National Guard of this state, the Utah State Defense Force serving under Title 39, Chapter 4, and the unorganized militia are at all times subject to the laws and military regulations of the United States governing them, while serving under Title 32, United States Code and the laws and military rules of the state.

(2) The governor may make rules as necessary to make the laws and military regulations of the United States effective within the state.

Amended by Chapter 9, 1988 Special Session 2

**39-1-62. Group life insurance for members of National Guard.**

The lives of a group comprised solely of members of the Utah National Guard may be insured under a policy of group life insurance issued to an association of such members formed for purposes other than obtaining insurance. This association is deemed the policyholder, to insure members of the Utah National Guard for the benefit of persons other than the association or any of its officials, subject to the following requirements:

(1) The premium for the policy shall be paid by the policyholder, either from the association's own funds, or from charges collected from the insured members



specifically for the insurance.

(2) No policy may be placed in force unless at least 60% of the members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered.

(3) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the members or by the association. Such amounts may not exceed \$100,000 in the case of any member.

(4) Such insurance policy shall conform to the provisions of the Insurance Code in so far as such code is not inconsistent with the provisions of this section.

Amended by Chapter 179, 1983 General Session

**39-1-63. Tuition assistance for National Guard members -- Use and allocation -- Appropriation.**

(1) The Utah National Guard may provide tuition assistance to members for study at postsecondary institutions of learning, including Applied Technology Centers, subject to the following requirements:

(a) The individual must be, at the time he or she receives the assistance, an active member of the Utah National Guard.

(b) The assistance is for tuition only and shall be not more than the resident tuition for the actual course of postsecondary study engaged in by the individual.

(2) Tuition assistance shall be awarded for each academic year. Students may apply to the adjutant general for assistance for each year during which he or she is an active member of the Utah National Guard. In awarding assistance, the adjutant general shall consider the recruitment and retention needs of the National Guard.

(3) Tuition assistance is to be paid by the adjutant general of the state directly to the institutions involved from the funds appropriated.

(4) The adjutant general of the state shall establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.

(5) The adjutant general shall include a request each year for funds for this program in the annual budget for the National Guard.

(6) A person who transfers from the Select Reserve to the National Guard is not eligible for the tuition assistance in this section for one year from the date of transfer.

Amended by Chapter 233, 1998 General Session

**39-1-64. Extension of licenses for members of National Guard and reservists.**

(1) As used in this section, "license" means any license issued under:

(a) Title 58, Occupations and Professions; and

(b) Section 26-8a-302.

(2) Any license held by a member of the National Guard or reserve component of the armed forces that expires while the member is on active duty shall be extended until 90 days after the member is discharged from active duty status.

(3) The licensing agency shall renew a license extended under Subsection (2)

until the next date that the license expires or for the period that the license is normally issued, at no cost to the member of the National Guard or reserve component of the armed forces if all of the following conditions are met:

(a) the National Guard member or reservist requests renewal of the license within 90 days after being discharged;

(b) the National Guard member or reservist provides the licensing agency with a copy of the member's or reservist's official orders calling the member or reservist to active duty, and official orders discharging the member or reservist from active duty; and

(c) the National Guard member or reservist meets all the requirements necessary for the renewal of the license, except the member or reservist need not meet the requirements, if any, that relate to continuing education or training.

(4) The provisions of this section do not apply to regularly scheduled annual training.

Enacted by Chapter 82, 2004 General Session

**39-2-1. Members -- A body corporate -- Powers -- Expenses.**

(1) (a) The State Armory Board shall consist of the governor, the chair of the State Building Board, and the adjutant general.

(b) It shall be a body corporate with perpetual succession.

(c) It may have and use a common seal, and under the name aforesaid may sue and be sued, and contract and be contracted with.

(d) It may take and hold by purchase, gift, devise, grant, or bequest real and personal property required for its use.

(e) It may also convert property received by gift, devise, or bequest, and not suitable for its uses, into other property so available, or into money.

(2) The board shall have power to:

(a) borrow money for the purpose of erecting arsenals and armories upon the sole credit of the real property to which it has the legal title; and

(b) may secure such loans by mortgage upon such property:

(i) the mortgaged property shall be the sole security for such loan; and

(ii) no deficiency judgment shall be made, rendered, or entered against the board upon the foreclosure of the mortgage; provided, however, that property in one city shall not be mortgaged for the purpose of obtaining money for the erection of armories in any other place. Said board shall be deemed a public corporation, and its property shall be exempt from all taxes and assessments.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

### **39-2-2. Powers of State Armory Board.**

(1) The board shall supervise and control the armories and arsenals, and all real property held or acquired for the military purposes of the state.

(2) The board may:

(a) provide suitable armories and arsenals for the different organizations of the National Guard;

(b) lease buildings for armory and arsenal purposes throughout the state wherever necessary for the use of organizations of the National Guard and for the storage of state and government property at a rental that the board considers reasonable;

(c) erect armories and arsenals at places within the state that it considers necessary upon lands to which it has acquired the legal title;

(d) expend military funds to acquire legal title to lands and to construct armories and arsenals; and

(e) lease land that it holds under Subsection (1) to Department of Defense agencies for military purposes.

(3) (a) Subject to Subsection (3)(b), the board may take options for the purchase of any premises under lease to the state for armory and arsenal purposes:

(i) at any time during the life of the lease; and

(ii) when the purchase is in the state's interest.

(b) An option is not binding upon the board until it is approved by the Legislature.

(4) (a) Before legally binding the state to sell any armory, army premises, or other real property owned by the National Guard, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.

(b) Before legally binding the state to purchase any interest in real property, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.

(c) The Legislative Management Committee shall review each proposal and may:

(i) recommend that the board complete the purchase or sale; or

(ii) recommend that the board not complete the purchase or sale.

(5) The proceeds from the sales of armories and army premises authorized by this section shall be appropriated to the State Armory Board to be applied toward the construction of new armories.

Amended by Chapter 106, 2009 General Session

### **39-2-7. Budget -- Annual legislative approval.**

For the use of the State Armory Board, and for the purpose of payment of rentals for armories, and for the purpose of paying interest on any sum borrowed by said board for the erection of armories, and for the purpose of construction of new armories or other military facilities, the adjutant general shall prepare and submit to the governor, to be included in his budget to be submitted to the Legislature, a budget of the requirements for the expenses of the Utah National Guard in carrying out the provisions

of law for the fiscal year next following the convening of the Legislature.

Amended by Chapter 22, 1989 General Session

**39-2-9. Cities may assist in erecting armories.**

The board of commissioners and city councils of cities shall have power to appropriate from any funds of the city available for general purposes such sums as they may deem expedient for the purpose of assisting the State Armory Board in the erection of armories within their respective cities, and for the maintenance of armories located and maintained therein, and in all cities where waterworks and an electric light plant are owned by the city the water and electric light used in armories maintained therein may at the discretion of the city be furnished without cost.

No Change Since 1953

**39-3-1. Public officers and employees in military service -- Not to be prejudiced thereby -- Refusal to reinstate -- Procedure -- Motion -- Hearing and determination.**

(1) A public employee, public officer, or legislative employee, as defined in Section 67-16-3, who enters active service in any branch of the armed forces of this state or of the United States shall be granted a leave of absence during that service.

(2) (a) A person entitled to a leave of absence under this section shall be restored to the same position, or to a position equivalent to the same position, which the person held immediately prior to the commencement of active military service.

(b) A request for restoration of employment under this section must be submitted within 40 days after release from active service.

(c) Restoration of employment shall be made within 20 days after submission of the request to the employer.

(d) A person returning from active military service may not, without cause, be discharged or subjected to reduction of compensation for a period of one year following a return to employment under this section.

(3) A person returning to employment under this section:

(a) shall retain all personal, sick, and other leave to which the person was entitled immediately prior to the commencement of active military service;

(b) shall receive and earn benefits and compensation at a level not less than that to which the person would have been entitled had the officer or employee not been absent due to active military service; and

(c) may not be prejudiced, by the preservice employer or that employer's successor in interest, as to employment, appointment, reappointment, reemployment, or promotion by reason of the employee's active military service.

(4) (a) No public employee, public officer, or legislative employee may be required to resign from, vacate, or forfeit a governmental office or position as a consequence of entering into active military service.

(b) A person in active military service is not considered to be holding an office or position of trust or employment under the United States government for purposes of determining whether that person is disqualified or prohibited from retaining a position or

serving as a public employee, public officer, or legislative employee.

(c) Nothing in this section shall serve to extend a period of employment or term of office beyond that to which the affected person was elected or appointed. A person who is a legislator or public officer for a specific term by virtue of election or appointment is entitled to a leave of absence under this section for a period not to exceed the applicable term.

(5) A person denied restoration of employment or benefits given under this section may petition the district court of the county in which the person resides, or in which the denial occurs, to require the public employer to comply with the provisions of this section without delay. Fees or court costs may not be assessed against the petitioner. The court shall order a speedy hearing in the case and advance it on the calendar so far as reasonably possible. If the court determines that the petitioner is entitled to relief, the court shall order all appropriate relief, to include compensation for loss of wages and benefits and an award of attorneys' fees and costs.

Repealed and Re-enacted by Chapter 65, 1991 General Session

**39-3-2. Government employees in United States armed forces or National Guard -- Pay allowance for time spent on duty -- Deduction of vacation time prohibited.**

(1) All state employees who are members of the organized reserve of the United States armed forces, including the National Guard of this state, shall be allowed full pay for all time not in excess of 15 days per year spent on duty at annual encampment or rifle competition or other duties in connection with the reserve training and instruction requirements of the armed forces of the United States, including the National Guard of this state. This leave shall be in addition to any annual vacation leave with pay to which an employee may be entitled.

(2) County and municipal employees who are members of the organized reserve of the United States armed forces, including the National Guard of this state, may be allowed up to full pay for all time not in excess of 15 days per year spent on duty at annual encampment or rifle competition or other duties in connection with the reserve training and instruction requirements of the armed forces of the United States, including the National Guard of this state. This leave is at the discretion of the employing county or municipality and, if granted, shall be in addition to annual vacation leave with pay.

Amended by Chapter 217, 2003 General Session

**39-4-1. Governor authorized to organize Utah State Defense Force.**

(1) The governor may organize and maintain within this state, under regulations the United States may prescribe for discipline in training, military forces the governor considers necessary to defend this state.

(2) These forces shall be composed of officers commissioned or assigned, and able-bodied citizens of the state who volunteer for service, supplemented if necessary by persons in the militia enrolled by draft or otherwise as provided by law.

(3) These forces shall be additional to and distinct from the National Guard and shall be known as the Utah State Defense Force. These forces may be uniformed.

Amended by Chapter 210, 1988 General Session

**39-4-2. Governor to prescribe rules and regulations.**

The governor is authorized to prescribe rules and regulations not inconsistent with the provisions of this act governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such forces: Provided, such rules and regulations, in so far as he deems practicable and desirable, shall conform to existing law governing and pertaining to the National Guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces or by any member of such forces from any individual, firm, association or corporation by reason of such membership.

No Change Since 1953

**39-4-3. Compensation of force members.**

(1) Every member of the Utah State Defense Force, when called into active service by the governor shall receive compensation as prescribed by the governor.

(2) The compensation may not exceed the rate of pay under law for officers and other members of the National Guard when called into active service of the state by the governor.

Amended by Chapter 210, 1988 General Session

**39-4-4. Governor may requisition arms and equipment from secretary of defense.**

For the use of such forces, the governor is authorized to requisition from the secretary of war such arms and equipment as may be in possession of and can be spared by the war department; and to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be available.

No Change Since 1953

**39-4-5. Service outside state prohibited -- Exceptions.**

Such forces shall not be required to serve outside the boundaries of this state except:

(a) Upon the request of the governor of another state, the governor of this state may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. Such forces may be recalled by the governor at his discretion.

(b) Any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment or until

the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such persons for any crime committed in this state.

No Change Since 1953

**39-4-6. Forces of another state in fresh pursuit may make arrests.**

Any military forces or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and are authorized to arrest or capture such persons within this state while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful, and nothing contained in this section shall be deemed to repeal any of the provisions of the Uniform Act on the Fresh Pursuit of Criminals.

No Change Since 1953

**39-4-7. State Defense Force, as such, not subject to United States military service -- Members not exempt from United States military service.**

Nothing in this act shall be construed as authorizing such forces, or any part thereof to be called, ordered or in any manner drafted, as such into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

No Change Since 1953

**39-4-8. No organizations to be enlisted as a unit.**

No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

No Change Since 1953

**39-4-9. Qualifications of members.**

No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any

military or naval organization of this state, or of another state, or of the United States.

No Change Since 1953

**39-4-10. Oaths of force officers.**

The oath to be taken by officers commissioned in the forces shall be substantially in the form prescribed for officers of the National Guard, but substituting the words Utah State Defense Force, where necessary.

Amended by Chapter 210, 1988 General Session

**39-4-11. Term of force enlistment -- Oaths.**

A person may not be enlisted for more than one year, but enlistment may be renewed. The oath to be taken upon enlistment in the forces shall be substantially in the form prescribed for enlisted men of the National Guard, substituting the words, Utah State Defense Force, where necessary.

Amended by Chapter 210, 1988 General Session

**39-4-12. Military court law and rules of National Guard applicable -- Privilege from arrest, posse comitatus, and jury service.**

(1) When the forces or any part of them are ordered out for active service or are serving as members of the Utah State Defense Force, the Utah Code of Military Justice, as it applies to the state National Guard, and regulations prescribed under it apply to the Utah State Defense Force.

(2) Members of the Utah State Defense Force are privileged from arrest under Section 39-1-54, when in state service.

(3) Persons serving in the Utah State Defense Force are, during this service, exempt from posse comitatus and from jury duty.

Amended by Chapter 210, 1988 General Session

**39-4-13. Short title.**

This chapter may be cited as the Utah State Defense Force Act.

Amended by Chapter 210, 1988 General Session

**39-5-1. Power of governor to execute.**

The governor of this state is authorized to execute a compact on behalf of the state of Utah with any one or more of the states of the United States and the District of Columbia.

Amended by Chapter 211, 1997 General Session

**39-5-2. Form of compact.**

The compact shall be in substantially the following form:



The contracting states solemnly agree:

Article 1

PURPOSE OF ACT -- UTILIZATION OF RESOURCES --  
DIRECTORS ACT AS COMMITTEE

The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster as defined in Section 63K-3-102, from enemy attack or other cause, natural or otherwise, including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective States, including resources available from the United States Government or any other source, are essential to the safety, care, and welfare of the people in the event of an emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the Civil Defense agencies or similar bodies of the States that are parties to this compact. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article 2

CIVIL DEFENSE PLANS -- CONSULTATIONS --  
UNIFORMITY OF ACTION

It is the duty of each party State to formulate civil defense plans and programs for application within each State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out these civil defense plans and programs, the party States shall, if possible, provide and follow uniform standards, practices, and rules and regulations including:

- (1) insignia, arm bands, and other distinctive articles to designate and distinguish the different civil defense services;
- (2) blackouts and practice blackouts, air raid drills, mobilization of civil defense forces, and other tests and exercises;
- (3) warnings and signals for drills or attacks and the mechanical devices to be used in connection with them;
- (4) the effective screening or extinguishing of all lights, lighting devices, and appliances;
- (5) shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;
- (6) all materials or equipment used or to be used for civil defense purposes in order to assure that the materials and equipment will be easily and freely interchangeable when used in or by any other party State;
- (7) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;
- (8) the safety of public meetings or gatherings; and

(9) mobile support units.

### Article 3

#### DUTIES OF MEMBER STATES

Any party State requested to render mutual aid shall take any action necessary to provide and make available the resources covered by this compact in accordance with its terms; provided that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for itself. Each party State shall extend to the civil defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving State, duties, rights, privileges, and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the State receiving assistance.

### Article 4

#### EFFECT OF STATE LICENSE, CERTIFICATE OR PERMIT IN OTHER STATES

Any person holding a license, certificate, or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical, or other skills, may render aid involving the skill in any party State to meet an emergency or disaster and that State shall recognize the license, certificate, or other permit as if issued in the State in which aid is rendered.

### Article 5

#### RESTRICTION ON LIABILITY

No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission in good faith on the part of its forces while engaged, or on account of the maintenance or use of any equipment or supplies in connection with giving aid.

### Article 6

#### BASIC CONSIDERATIONS AND AUXILIARY ACTION

(1) Since it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among other States party to this compact, this instrument contains elements of a broad base common to all States, and nothing contained in it shall preclude any State from entering into supplementary agreements with another State or States. Any supplementary agreements may comprehend, but shall not be limited to provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment, and supplies.

(2) Any supplementary agreement made to implement this Article may not be construed to abridge, impair, or supersede any other provision of this compact or any obligation undertaken by a State pursuant to the terms of this compact. A supplementary agreement implementing this Article may modify, expand, or add to any obligation among the parties to the supplementary agreement.

### Article 7

## COMPENSATION AND BENEFITS

Each party State shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that State and the representatives of deceased members of the forces of that State in case the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within that State.

### Article 8

## CONTRIBUTIONS AND REIMBURSEMENTS

Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with the requests; provided that any aiding party State may assume in whole or in part any loss, damage, expense, or other cost, or may loan any equipment or donate any services to the receiving party State without charge or cost; and provided further that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party States receiving aid from any liability and reimburse the party State supplying civil defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of its forces during the time of the rendition of aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

### Article 9

## PLANS FOR EVACUATION AND RECEPTION OF POPULATIONS

Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party States and the various local civil defense areas. Any plans shall include the manner of transporting evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Any plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Any expenditures shall be reimbursed by the party State of which the evacuees are residents, or by the United States Government under plans approved by it. After the termination of the emergency or disaster, the party State of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of the evacuees.

### Article 10

## MEMBER STATES

This compact shall be available to any state of the United States and the District of Columbia.

### Article 11

## COMMITTEE ACTION AND REQUESTS

The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of that agency of the United States Government may attend meetings of the committee.

### Article 12

## WHEN COMPACT EFFECTIVE

This compact shall become operative immediately upon its ratification by any of the States and Territories enumerated in Article 10 of this compact as between it and the State of Utah and any other of the States or Territories ratifying it and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of any supplementary agreements entered into shall, at the time of their approval, be deposited with each of the party States and with the Civil Defense Agency and other appropriate agencies of the United States Government.

### Article 13

## DURATION OF COMPACT

This compact shall continue in force and remain binding on each party State until the Legislature or the Governor of the party State takes action to withdraw from it. Any action to withdraw shall not be effective until 30 days after notice of the action has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

### Article 14

## CONSTRUCTION OF COMPACT -- CONSTITUTIONALITY

This compact shall be construed to effectuate the purposes stated in Article 1. If any provision of this compact is declared unconstitutional, or the applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability to other persons and circumstances shall not be affected.

### Article 15

## SCOPE OF COMPACT

- (1) In addition to the situations in Article 1, this compact shall apply to:
  - (a) searches for and rescue of persons who are lost, marooned, or otherwise in danger;
  - (b) actions useful in coping with any disasters or designed to increase the capability to cope with any disasters;
  - (c) incidents, or the threat of incidents, which endanger the health or safety of the public and which require the use of special equipment, trained personnel, or personnel in larger numbers than are locally available in order to reduce, counteract, or remove the danger;
  - (d) giving and receiving aid between political subdivisions of party States; and
  - (e) exercises, drills, or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.
- (2) Except as expressly limited by this compact or a supplementary agreement, any aid authorized by this compact or a supplementary agreement may be furnished by any agency of a party State, a political subdivision of the State, or by a joint agency of

any two or more party States or of their subdivisions. Any joint agency providing aid shall be entitled to reimbursement to the same extent and in the same manner as a state. The personnel of a joint agency, when rendering aid under this compact shall have the same rights, authority, and immunity as personnel of party States.

(3) Nothing in this Article shall be construed to exclude from coverage under Articles 1 through 14 of this compact any matter which, in the absence of this Article, could reasonably be construed to be covered.

Amended by Chapter 382, 2008 General Session

**39-5-3. Owner of property free from liability for injuries to persons or property during actual, impending, or mock attack.**

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice attack, shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises or for loss of, or damage to, the property of such person.

Enacted by Chapter 130, 1955 General Session

**39-6-1. Short title.**

This chapter is known and may be cited as the "Utah Code of Military Justice," and may also be cited as the "UCMJ."

Enacted by Chapter 210, 1988 General Session

**39-6-2. Definitions.**

As used in this chapter:

- (1) "Accuser" means a person who:
  - (a) signs and swears to charges;
  - (b) directs that charges nominally be signed and sworn to by another; or
  - (c) any other person who has an interest other than an official interest in the prosecution of the accused.
- (2) "Commanding officer" means both a commissioned officer and a warrant officer designated as a commander.
- (3) "Commissioned officer" includes a commissioned warrant officer.
- (4) "Convening authority" means the governor or the adjutant general.
- (5) "Duty status other than state active duty" means any other type of duty, and includes going to and returning from the duty.
- (6) "Enlisted member" means a person in an enlisted grade.
- (7) "Grade" means a step or degree in a graduated scale of office or military rank, established and designated as a grade by law or regulation.
- (8) "Legal officer" means any commissioned officer of the organized National Guard of the state designated to perform legal duties for a command.

(9) "Major command" or "MACOM" means a major subdivision of the Utah National Guard.

(10) "Military" means any or all of the armed forces of the United States.

(11) "Military court" means a court-martial, a court of inquiry, or a provost court.

(12) "Military judge" means a qualified staff judge advocate officer of a military court detailed under Section 39-6-20.

(13) "National Guard" means the Utah Army and Air National Guard, including part-time and full-time active guard and reserve (AGR), and includes the Utah unorganized militia when called to active duty by the governor of the state.

(14) "Officer" means commissioned or warrant officer.

(15) "Rank" means the order of precedence among members of the armed forces.

(16) "State active duty" means full-time duty in the active military service of the state under an order of the governor, issued pursuant to the governor's authority, and includes going to and returning from the duty.

(17) "State judge advocate" or "SJA" means the commissioned officer responsible for supervising the administration of the military justice in the National Guard, and qualified and designated as judge advocate general corps officer.

(18) "Superior commissioned officer" means a commissioned officer superior to another in rank or command.

(19) "UCMJ" means Title 39, Chapter 6, Utah Code of Military Justice.

Amended by Chapter 287, 2008 General Session

**39-6-3. Persons subject to chapter.**

(1) The following persons are subject to this chapter:

(a) all members of the National Guard, including full-time members serving under Title 32, United States Code;

(b) all other persons lawfully ordered to duty in or with the National Guard or the unorganized militia, from the dates they are required by the terms of the order or other directive;

(2) (a) If there is a military activation by the federal government, all activated persons who would otherwise be under the jurisdiction of this chapter are subject to concurrent jurisdiction under federal and state law.

(b) Persons under this subsection may be tried for offenses occurring during activation and after release from federal service, while within the period of an applicable statute of limitations.

Enacted by Chapter 210, 1988 General Session

**39-6-4. Fraudulently obtained discharge -- Desertion.**

(1) A person discharged from the National Guard who is later charged with having fraudulently obtained the discharge is, subject to Section 39-6-72, subject to trial by a military court on that charge.

(2) After apprehension, he is subject to this chapter while in military custody for trial. Upon conviction of that charge he is subject to trial for all offenses under this

chapter committed prior to fraudulent discharge.

(3) A person who has deserted from a military unit, which act would subject him to the jurisdiction of this chapter, is not relieved from the jurisdiction of this chapter due to a separation from any later period of service.

Enacted by Chapter 210, 1988 General Session

**39-6-5. Application of chapter to persons in and without state -- Military courts held without the state.**

(1) This chapter applies to all persons:

(a) subject to this chapter within the state; and

(b) otherwise subject to this chapter while serving outside the state, and while going to and returning from the service outside the state, as if they were serving inside the state.

(2) Military courts may be convened and held in units of the National Guard while those units are serving without the state, with the same jurisdiction and powers as to persons subject to this chapter as if the proceedings were held within the state. Offenses committed without the state may be tried and punished either within or without the state, as military necessity dictates.

Enacted by Chapter 210, 1988 General Session

**39-6-6. State judge advocate -- Appointment -- Qualifications -- Duties -- Assistants.**

(1) The adjutant general shall appoint an officer of the National Guard as the state judge advocate. The officer shall be a member of the Utah State Bar, a United States federal court, branch qualified, and designated as a staff judge advocate officer.

(2) The state judge advocate is the principal military legal advisor and shall, in connection with rendering legal advice to the adjutant general, prepare pretrial advice, a post-trial review, and act as legal advisor to the adjutant general on all matters involving military justice, the Utah Manual for Military Courts, and the Utah Code of Military Justice.

(3) The adjutant general may appoint assistant state judge advocates as considered necessary. They shall be officers of the National Guard, members of the Utah State Bar, branch qualified, and designated as staff judge advocate officers.

(4) The SJA or an assistant shall make frequent inspections of military units throughout the state to supervise the administration of military justice.

(5) The convening authority shall review directly with the SJA all matters relating to the administration of military justice and administrative actions. The assistant state judge advocate or legal officer of any command may communicate directly with the assistant state judge advocate or legal officer of a superior or subordinate command, or with the SJA.

(6) A person who has acted as a member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, may not subsequently act as assistant state judge advocate, SJA, or legal officer to any reviewing authority

upon the same case.

Amended by Chapter 287, 2008 General Session

**39-6-7. Apprehension.**

(1) "Apprehension" means the taking of a person into custody by competent authority, with or without a warrant.

(2) A person authorized under this chapter or rules made under it to apprehend persons subject to this chapter, any provost marshal of a military court appointed under this chapter, and any peace officer authorized by law, may apprehend persons subject to this chapter upon probable cause to believe that an offense has been committed and the person to be apprehended committed the offense.

(3) Commissioned officers, warrant officers, and noncommissioned officers may quell disorderly conduct among persons subject to this chapter and may apprehend those persons who are taking part.

Amended by Chapter 15, 1989 General Session

**39-6-8. Arrest.**

(1) "Arrest" means the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within a specified area.

(2) An enlisted member may be ordered into arrest or confinement by any commanding officer by an order, oral or written, delivered in person or through persons subject to this chapter, or through a person authorized by this chapter to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(3) A commissioned officer or warrant officer may be ordered apprehended, or ordered into arrest or confinement, only by a commanding officer to whose authority he is subject, and only by an order, oral or written, delivered in person or by another commissioned officer. The authority to order the person apprehended or into arrest or confinement may not be delegated.

(4) A person may not be apprehended or placed under arrest or confinement except upon probable cause.

(5) This section does not limit a person authorized to apprehend offenders in his securing the custody of an alleged offender until the proper authority may be notified.

Enacted by Chapter 210, 1988 General Session

**39-6-9. Confinement.**

(1) "Confinement" means the physical restraint of a person.

(2) (a) A person subject to this chapter, who is charged with an offense under this chapter, may be ordered into arrest or confinement, as circumstances require.

(b) When a person subject to this chapter is placed into arrest or confinement prior to trial, action shall be taken immediately to notify him of the specific offense charged against him, and to either try the person, or dismiss charges against him and



release him.

(3) Confinement before, during, or after trial by a military court shall be in either a guard house or a civilian jail, or other penal facility determined by the governor or his designee.

Enacted by Chapter 210, 1988 General Session

**39-6-10. Parties under obligation to keep a prisoner -- Reporting.**

(1) A provost marshal, commander of a guard, master at arms, warden, keeper, sheriff, or officer of a city or county jail or other jail designated under Section 39-6-9, may not refuse to receive or keep any prisoner committed to his charge if the committing person provides a statement signed by him, indicating the offense charged against the prisoner.

(2) Any party under Subsection (1) charged with keeping a prisoner shall within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the nature of the offense charged against him, and the name of the person who ordered or authorized the commitment.

Amended by Chapter 15, 1989 General Session

**39-6-11. Person confined prior to trial -- Punishment limitations.**

(1) Subject to Section 39-6-9, a person in confinement prior to trial may not be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him.

(2) The arrest or confinement imposed on a prisoner may not be more rigorous than necessary to ensure the prisoner's presence. However, he may be:

(a) subjected to minor punishment during that period for discipline violations; and

(b) required to perform labor as necessary for the policing and sanitation of his living quarters, mess facilities, and the area immediately adjacent to these areas, or as otherwise designated by regulations governing the housing of a prisoner.

Amended by Chapter 9, 1988 Special Session 2

**39-6-12. Person accused of offense against civilian -- Sentences of military and civilian courts.**

(1) Under this chapter, a person on duty and subject to this chapter who is accused of an offense against a civilian person may be delivered, upon request, to the civilian authority for judicial proceedings.

(2) (a) When a person under sentence imposed by a military court is delivered to a civilian authority under this section, and the person is convicted in a civilian court, the execution of the sentence of the military court is interrupted.

(b) After the person has completed the sentence imposed by the civilian court, upon request of military authority, he shall be returned to military custody for completion of his military court sentence.

Enacted by Chapter 210, 1988 General Session

**39-6-14. Nonjudicial punishment.**

(1) The governor and the adjutant general of Utah may prescribe regulations governing the administration of nonjudicial punishment. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by a civilian court of competent jurisdiction.

(2) A service member subject to this chapter may request trial by military court in lieu of nonjudicial punishment at any time prior to imposition of nonjudicial punishment.

(a) Upon receipt of a timely request for trial by military court in lieu of nonjudicial punishment, the commanding officer may grant the request, or deny the request and continue with nonjudicial punishment proceedings. If the commander denies the member's request for trial by military court, the commander may not impose limitations on personal liberty as a punishment under nonjudicial punishment proceedings. For purposes of this section, punishments imposing limitations on personal liberty include restriction to specific limited areas and extra duties.

(b) Denial of a request for trial by military court in lieu of nonjudicial punishment does not create a private right of action and is not subject to judicial review.

(3) Any commanding officer in the Utah National Guard may, in addition to a reprimand, impose one or more of the punishments under this section without the intervention of a military court. Forfeiture of pay shall be calculated based on the monthly amount a service member would receive as base pay if on active duty. If a reduction of pay grade is imposed, forfeiture of pay is based on the grade to which the service member was reduced even if the reduction was suspended.

(4) Punishment imposed by the governor, a general officer, or a full colonel upon officers within the general officer's or full colonel's command may include:

(a) forfeiture of not more than one-half of one month's pay per month for three months; and

(b) restriction to specific limited areas, with or without suspension from duty, for not more than 60 consecutive days.

(5) Punishment imposed by the governor, a general officer, or a full colonel upon enlisted personnel within the general officer's or full colonel's command may include:

(a) forfeiture of not more than one-half of one month's pay per month for two months;

(b) reduction of one or more pay grades if the imposing commander holds promotion authority over the grade from which the enlisted person was demoted, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(c) extra duties, including fatigue or other duties, for not more than 60 consecutive days; and

(d) restriction to specific limited areas, with or without suspension from duty, for not more than 60 consecutive days.

(6) Punishment imposed by a commander of the grade of lieutenant colonel or major upon enlisted personnel within the lieutenant colonel's or major's command may

include:

- (a) forfeiture of not more than one-half of one month's pay per month for two months;
- (b) reduction of no more than two pay grades if the imposing commander holds promotion authority over the grade from which the enlisted person was demoted;
- (c) extra duties, including fatigue or other duties, for not more than 45 consecutive days; and
- (d) restriction to specific limited areas, with or without suspension of duty, for not more than 45 consecutive days.

(7) Punishment imposed by a commander of the grade of captain or lieutenant upon enlisted personnel within the captain's or lieutenant's command may include:

- (a) forfeiture of not more than one-half of one month's pay for one month;
- (b) extra duties, including fatigue or other duties, for not more than 30 consecutive days;
- (c) restriction to specific limited areas, with or without suspension from duty, for not more than 30 consecutive days; and
- (d) reduction of one pay grade if the imposing commander holds promotion authority over the grade from which the enlisted person was demoted.

(8) Punishments of restriction to specific limited areas and extra duty may be combined to run concurrently, but the combination may not exceed the maximum duration imposable for extra duty.

(9) (a) The imposing commander or a successor in command may, at any time, suspend by probation:

- (i) all or any part of the amount of the unexecuted punishment; and
  - (ii) a reduction in grade or a forfeiture imposed, whether or not executed.
- (b) The imposing commander or a successor in command shall set the terms of probation for any suspended punishment.

(c) The imposing commander or a successor in command may, at any time, remit or mitigate any part or amount of the unexecuted punishment. The imposing commander or a successor in command may also set aside in whole or in part the findings, punishment, or both, whether executed or unexecuted, and restore all rights, privileges, and affected property.

(d) The imposing commander or a successor in command may mitigate reduction in grade to forfeiture of pay. Extra duties may be mitigated to restriction.

(e) A mitigated punishment may not span a greater period of time than the original punishment.

(f) When mitigating a reduction in grade to forfeiture of pay, the amount of the forfeiture may not exceed the maximum allowable forfeiture the imposing commander could have originally imposed.

(10) (a) A service member punished under this section may appeal to the next superior commander in the service member's chain of command. The next superior commander shall conduct a de novo review of both the findings and punishment under procedures provided by regulation. The next superior commander may modify or set aside the findings or punishment, having the same options afforded the imposing commander as described in this section. In no case may the next superior commander increase the severity of the findings or the amount of punishment originally imposed.

(b) If two levels of command exist above the imposing commander, the service member, having exhausted the service member's first level of appeal, may appeal to the next superior commander. If the matter originates with the governor, the adjutant general, or one level of command below the adjutant general, no right to a second appeal exists. The decision of the adjutant general on an appeal of nonjudicial punishment is final and is not subject to further appeal or judicial review.

(c) The decision of the governor or the adjutant general to impose nonjudicial punishment upon a service member is final and is not subject to further appeal or judicial review.

(d) The imposing commander shall promptly forward any appeal to the next superior commander. During the course of the appeal, the imposing commander may require the appellant to submit to the imposed punishment.

(11) A superior commander shall first obtain a legal review from a judge advocate of the Utah National Guard before acting on an appeal from any of the following imposed punishments:

- (a) forfeiture of more than seven day's pay;
- (b) reduction of one or more pay grades;
- (c) extra duties for more than 14 days; or
- (d) restriction for more than 14 days.

(12) Punishments imposed under this section, except forfeiture of pay, may not extend beyond the termination of the duty status of the punished individual.

Repealed and Re-enacted by Chapter 60, 2012 General Session

### **39-6-15. Military court -- Composition.**

(1) In the National Guard that is not in federal service, there is a military court to hear matters designated under the UCMJ.

(2) The court shall be composed of:

- (a) a military judge and not fewer than three members; or
- (b) a military judge, if before the court is assembled, the accused, knowing the identity of the military judge and after consultation with his defense counsel, requests in writing a court composed only of a military judge, and the military judge approves the request.

Enacted by Chapter 210, 1988 General Session

### **39-6-16. Military court -- Jurisdiction.**

(1) (a) Subject to Subsections (2) and (3), a military court in this state has jurisdiction to try persons subject to this chapter for any offense punishable by this chapter.

(b) The military court may, under limitations the governor may prescribe, and under applicable state and federal regulations governing punishment, impose any punishment not prohibited by this chapter or state law, including the issuance of a bad conduct discharge, when the court is in session to consider a penalty.

(2) Each major command component of the National Guard has military court jurisdiction over all persons subject to this chapter. The exercise of this jurisdiction by

one command component over members of another shall be in accordance with regulations prescribed by the governor.

(3) Members of the Utah National Guard or the unorganized militia in federal service are subject to the federal Uniform Code of Military Justice and all federal and state laws pertaining to them, until released back to state control.

Enacted by Chapter 210, 1988 General Session

**39-6-17. Bad conduct discharge or dismissal -- Approval by governor.**

(1) A sentence imposing dismissal or bad conduct discharge against a member of the National Guard who is not in federal service may not be executed until it is approved by the governor.

(2) A discharge or dismissal may not be imposed by any military court unless a complete written record of the proceedings has been made and is available for consideration of the military court.

Amended by Chapter 15, 1989 General Session

**39-6-18. Convening military court.**

A military court may be convened in the National Guard, while it is not in the federal service, by the governor or adjutant general.

Enacted by Chapter 210, 1988 General Session

**39-6-19. Persons who may serve on a military court.**

(1) A commissioned officer off or on duty with the National Guard may serve on a military court for the trial of any person brought before the court for trial.

(2) A warrant officer off or on duty with the National Guard may serve on a military court for the trial of any person, other than a superior commissioned officer, who is brought before the court for trial.

(3) (a) An enlisted member of the National Guard who is not a member of the same unit as the accused may serve on a military court for the trial of any enlisted member brought before the court for trial.

(b) However, an enlisted member may serve as a member of a court only if before the conclusion of a session called by the court under Section 39-6-32, or in the absence of the session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on the court.

(c) If the request is made under Subsection (3)(b), the accused may not be tried by the military court when enlisted members comprise less than 1/2 of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies.

(d) If the members cannot be obtained, the court may be assembled and trial held without them, but the convening authority shall make a detailed written explanation of why they could not be obtained. This statement shall be appended to the court record.

(e) "Unit" means any regularly organized major command (MACOM) of the

National Guard.

(4) (a) A person subject to this chapter shall be tried by a military court, but no member may be junior to him in rank or grade.

(b) When an authority convenes a military court, it shall detail as members of the court those persons who in his opinion are best qualified for the duty by age, education, training, experience, length of service, and judicial temperament.

(c) A member is not eligible to serve as a member of a military court when he is the accuser or a witness in the case or has acted as investigating officer or as counsel in the same case.

Amended by Chapter 15, 1989 General Session

**39-6-20. Military judge -- Qualifications -- Designation for detail.**

(1) The authority convening a military court shall, subject to regulations made by the governor, detail a military judge to preside over each open session of the court.

(2) A military judge shall be:

(a) a commissioned officer;

(b) a member of the Utah State Bar;

(c) a member of the bar of a federal court; and

(d) certified as qualified for this duty by the state judge advocate.

(3) (a) The military judge of a military court shall be designated by the state judge advocate or the SJA's designee for detail by the convening authority.

(b) Unless the military court was convened by the governor, neither the adjutant general nor the adjutant general's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the detailed military judge that relates to the judge's performance of duty as a military judge.

(4) A person is not eligible to act as a military judge in a case if the person:

(a) is the accuser;

(b) is a witness in the case;

(c) has acted as investigating officer; or

(d) is a counsel in the same case.

(5) The military judge of a court may not:

(a) consult with the members of the court, except in the presence of the accused, trial counsel, and defense counsel; or

(b) vote with the members of the court.

Amended by Chapter 287, 2008 General Session

**39-6-21. Military court -- Duties of convening authority.**

Under regulations the governor may prescribe, the convening authority of a military court or court of inquiry:

(1) shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court; and

(2) may detail or employ interpreters to interpret for the court.

Enacted by Chapter 210, 1988 General Session

**39-6-22. Military court members -- When excused -- Trial procedure.**

(1) A member of a military court may not be absent or excused after the court has been assembled for the trial of the accused, except because of physical disability, the result of a challenge, or for good cause by order of the convening authority.

(2) (a) When a military court other than a court composed solely of a military judge is reduced to fewer than four members, the trial may not proceed unless the convening authority details new members sufficient to provide not fewer than four members.

(b) When the new members have been sworn, the trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and the counsel for the prosecution and defense.

Amended by Chapter 15, 1989 General Session

**39-6-23. Military court -- Charges and specifications -- Contents -- Notification of accused.**

(1) Charges and specifications shall be signed by a person subject to this chapter under oath before a person authorized to administer oaths and shall state that:

(a) the person signing has personal knowledge of, or has investigated, the matters set forth in the document; and

(b) the matters set forth are true to the best of his knowledge and belief.

(2) (a) Upon the preferring of charges, the appropriate authority shall take action immediately to determine what disposition should be made in the interest of justice and discipline.

(b) The accused shall be informed of the charges against him as soon as practicable.

Enacted by Chapter 210, 1988 General Session

**39-6-24. Person charged -- Limits on evidence obtained from other persons.**

(1) A person subject to this chapter may not:

(a) compel any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him;

(b) interrogate, or request any statement from an accused or a person suspected of an offense, without first informing him of the nature of the accusation and advising him that he is not required to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him may be used as evidence against him in a trial by military court; and

(c) compel any person to make a statement or produce evidence before any military court, if the statement or evidence is not material to the issue before the court and may tend to degrade him.

(2) A statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may not be received in evidence against him in a trial by a military court.

Enacted by Chapter 210, 1988 General Session

**39-6-26. Charges to be forwarded to governor or adjutant general.**

When a person is held for trial by military court, the commanding officer shall forward the charges, together with the investigation and related papers, to the governor or the adjutant general within five working days, excluding holidays, after the accused is ordered into arrest or confinement.

Enacted by Chapter 210, 1988 General Session

**39-6-27. Review of charge by SJA -- Corrections to charges.**

(1) (a) Before directing the trial of any charge by a military court, the convening authority shall refer it to the SJA for consideration and advice.

(b) The convening authority may not refer a charge to a military court for trial unless he or she has found that the charge alleges an offense under this chapter and is warranted by sufficient evidence, as indicated in the report of the investigation.

(2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications as necessary may be made to conform to the evidence.

Amended by Chapter 287, 2008 General Session

**39-6-28. Service of charges on accused.**

(1) The trial counsel to whom charges are referred for trial shall cause to be served upon the accused a copy of the charges to be tried.

(2) A person may not, against his objection, be brought to trial or be required to participate by himself or with counsel in a session called by the military judge under Section 39-6-32, in a military court case, within five days after the service of charges upon him.

Enacted by Chapter 210, 1988 General Session

**39-6-29. Court procedures -- Regulations by governor.**

(1) In cases subject to or brought under this chapter, before military courts, or before other military tribunals, the procedure, including elements of proof, may be prescribed by the governor by regulations.

(2) The regulations shall, as the governor considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state. However, the regulations may not be contrary to or inconsistent with this chapter.

Enacted by Chapter 210, 1988 General Session

**39-6-30. Military court findings -- Prohibition of censuring or influencing**



**court actions -- Military court member's performance.**

(1) An authority convening a military court, or any other commanding officer, or officer serving on the staff of any of these persons, may not censure, reprimand, or admonish the court or any member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or any other function carried out in the proceeding.

(2) A person subject to this chapter may not attempt to coerce, or by any unauthorized means influence the action of:

(a) the military court or any other military tribunal or any member of these in their arriving at the findings or sentence in any case; or

(b) any convening, approving, or reviewing authority with respect to his judicial acts.

(3) Subsection (2) does not apply to:

(a) general instructional or informational courses in military justice, if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of a military court; or

(b) statements and instructions given in open court by the military judge, the president of a military court, or counsel.

(4) In preparing an effectiveness, efficiency, or fitness report, or any other report or document used in whole or in part for determining whether a member of the National Guard is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the National Guard, or in determining whether a member should be retained in an active status, a person subject to this chapter may not:

(a) consider or evaluate the performance of duty of any member of a military court; or

(b) give a less favorable rating or evaluation of any member of the National Guard because of the zeal with which the member, as counsel, represented any accused before a military court or before any other proceeding authorized by this chapter.

Enacted by Chapter 210, 1988 General Session

**39-6-31. Military court -- Prosecutions in state name -- Right to defense trial counsel.**

(1) The trial counsel of a military court prosecutes in the name of the state, and shall prepare the record of the proceedings under the direction of the court.

(2) (a) The accused has the right to be represented in his defense before a military court by civilian counsel if provided by him at no expense to the state, or by military counsel of his own selection if reasonably available.

(b) If the accused has counsel of his own choosing, the defense counsel and any assistant defense counsel who were detailed shall act as the associate counsel to the counsel for the accused if the accused desires. Otherwise, detailed counsel shall be excused by the military judge.

(3) In a court proceeding resulting in a conviction, the defense counsel may forward for attachment to the record of proceedings a brief of matters that should be considered on behalf of the accused on review, including any objection to the contents

of the record.

(4) An assistant trial counsel of a military court may, under the direction of the trial counsel, or as trial counsel when he is so qualified, perform any duty imposed by law, regulation, or the custom of the service on the trial counsel of the court. An assistant trial counsel of a military court may perform any duty of the trial counsel.

(5) An assistant defense counsel of a military court may, under the direction of the defense counsel or when he is qualified to be the defense counsel, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Amended by Chapter 110, 1993 General Session

**39-6-32. Military court -- Session -- Procedures.**

(1) After the service of charges has been referred for trial to a military court composed of a military judge and members, the military judge may, subject to Section 39-6-28, call the court into session. The session shall be made a part of the record, and shall be in the presence of the accused, the defense counsel, and the trial counsel.

(2) The session may be conducted without the presence of the members. A session under this subsection may be conducted for the following purposes:

(a) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) hearing and ruling upon any matter a military judge under this chapter may rule upon, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) holding the arraignment and receiving the pleas of the accused, if permitted by regulations prescribed by the governor or adjutant general; or

(d) performing any other procedural function that may be performed by the military judge under this chapter or under rules prescribed under Section 39-6-39 and which does not require the presence of the members of the court.

(3) When the members of a military court deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, and the military judge.

Enacted by Chapter 210, 1988 General Session

**39-6-33. Military court -- Continuance.**

The military judge may, upon good cause shown, grant a continuance to trial or defense counsel for a stated period of time, when a continuance appears to be just.

Amended by Chapter 15, 1989 General Session

**39-6-34. Military court -- Challenge for cause -- Peremptory challenge.**

(1) The military judge and members of a military court may be challenged by the accused or the trial counsel for cause stated to the court. The military judge of the

court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall be presented and decided before those by the accused are offered, unless the judge determines otherwise.

(2) Each accused and the trial counsel are entitled to one peremptory challenge, but the military judge may not be challenged except for cause. The military judge in his discretion may grant additional peremptory challenges where appropriate.

Enacted by Chapter 210, 1988 General Session

**39-6-35. Military court -- Oath or affirmation.**

(1) Before performing their respective duties, military judges, interpreters, members of the court, the trial counsel, the assistant trial counsel, the defense counsel, the assistant defense counsel, and court reporters shall take an oath or affirmation to perform their duties faithfully.

(2) (a) The governor shall prescribe by regulation the oath or affirmation, the time and place of taking either of them, the manner of recording the taking, and whether the oath is taken for all cases in which these duties are to be performed or for a specific case.

(b) The regulations may provide that an oath or affirmation to faithfully perform any of the duties under Subsection (1) except that of court reporter, be taken at any time by any judge advocate, legal officer, or other person certified as qualified or competent for the duty. The regulations may also provide that an oath under this subsection need not again be taken at the time the judge advocate, legal officer, or other person having taken an oath under this section is detailed to that duty.

(c) Each witness in a military court shall be examined on oath or affirmation.

Enacted by Chapter 210, 1988 General Session

**39-6-36. Desertion or absence without leave and other offenses -- Time limit on trial -- Tolling of time limits.**

(1) A person charged with desertion or absence without leave may be tried and punished at any time, within four years after the preferral of charges.

(2) Except under Subsection (1), a person charged with any offense is not liable to be tried by a military court or punished under Section 39-6-13 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising jurisdiction as a military court convening authority.

(3) Periods when the accused was outside the state's jurisdiction to apprehend him, or when he is in the custody of civilian authorities, are excluded in computing limitations of time under this section.

Enacted by Chapter 210, 1988 General Session

**39-6-37. Second trial on an offense prohibited.**

(1) A person may not, without his written consent, be brought to trial a second time in any military or civilian court of the state for the same offense.

(2) A proceeding in which an accused has been found guilty by a military court upon any charge or specification, is not a trial under this section until the finding of guilty has become final and the review of the case has been completed.

(3) A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial under this section.

Enacted by Chapter 210, 1988 General Session

**39-6-38. Plea of not guilty -- Accepted -- Withdrawn.**

(1) A plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty, if the accused:

- (a) after arraignment makes an irregular pleading;
- (b) after a plea of guilty raises a matter inconsistent with the plea;
- (c) has apparently entered the plea of guilty improvidently or through lack of understanding of its meaning and effect; or
- (d) fails or refuses to plead.

(2) (a) A plea of guilty by the accused may not be accepted to any charge or specification alleging an offense for which a determinate term of one year confinement may be imposed.

(b) If a plea of guilty has been accepted by the military judge, a finding of guilty, if permitted by regulations promulgated by the governor, shall be entered immediately without vote and constitutes the finding of the court.

(c) If the plea of guilty is withdrawn prior to announcement of the sentence, the proceedings shall continue as though the accused had pleaded not guilty.

Enacted by Chapter 210, 1988 General Session

**39-6-39. Obtaining evidence and witnesses -- Procedure.**

(1) The trial and defense counsel, and the military court, have equal opportunity to obtain witnesses and other evidence under regulations the governor, adjutant general, or the applicable rules of civil and criminal procedure or state or federal law prescribe.

(2) The military court judge may:

- (a) issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;
- (b) issue subpoenas duces tecum and other subpoenas;
- (c) enforce by attachment the attendance of witnesses and the production of books and papers; and
- (d) sentence for refusal to be sworn or to answer, as under civil procedure.

(3) Process issued in a military court to compel witnesses to appear and testify and to compel the production of other evidence may be served within the boundaries of the state.

Enacted by Chapter 210, 1988 General Session

**39-6-40. Offenses against the state by person not subject to chapter.**

A person not subject to this chapter is guilty of an offense against the state if he willfully neglects or refuses to appear, refuses to qualify as a witness or to testify, or refuses to produce any evidence which that person may have been legally subpoenaed to produce, after he has been:

(1) subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before the court; and

(2) paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the district courts of the state.

Amended by Chapter 9, 1988 Special Session 2

**39-6-41. Contempt -- Penalty.**

(1) A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any disorderly conduct.

(2) The punishment may not exceed confinement for three days in the county jail of the county where the proceedings are held, or a fine of \$200, or both.

Enacted by Chapter 210, 1988 General Session

**39-6-42. Depositions -- Procedure.**

(1) After charges have been signed under Section 39-6-23, any party may take oral or written depositions unless the military judge hearing the case, or if the case is not being heard, an authority competent to convene a military court for the trial of those charges prohibits the depositions for good cause.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized under state law or the law of the jurisdiction where the deposition is taken to administer oaths.

(4) An authenticated deposition, taken upon reasonable notice to the other parties, may be read in evidence, to the extent it is admissible under the rules of evidence, before any military court or any proceeding before a court of inquiry, if it appears to the court:

(a) the witness resides or is beyond the state in which the military court or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the location of the trial or hearing;

(b) the witness due to death, age, illness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the location of the trial or hearing;

(c) the present location of the witness is unknown; or

(d) the deposition was taken in the physical presence of the accused.

Amended by Chapter 15, 1989 General Session

**39-6-43. Sworn testimony -- Read in evidence.**

(1) The sworn testimony of a case which is contained in the authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may be read in evidence by any party before a military court if:

- (a) otherwise admissible under the rules of evidence;
- (b) the accused was a party before the court of inquiry;
- (c) the same issue was involved or the accused consents to the introduction of the evidence; or

(d) the accused was physically present when the testimony was taken.

(2) The testimony may be read in evidence:

- (a) before a court of inquiry or a military board; or
- (b) by the defense only in cases extending to the dismissal of a commissioned officer.

Enacted by Chapter 210, 1988 General Session

**39-6-44. Voting by military court members -- Procedure -- Presumption of innocence -- Reasonable doubt -- Burden of proof.**

(1) (a) Voting by members of a military court on the findings and on the sentence, and upon questions of challenge, are by secret written ballot.

(b) The junior member of the court counts the votes.

(c) The count shall be reviewed by the president, who shall immediately announce the result of the ballot to the members of the court.

(2) (a) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings.

(b) A ruling made by the military judge upon a question of law or an interlocutory question, other than the factual issue of mental responsibility of the accused, is final and is the ruling of the court. However, the military judge may change the ruling at any time during the trial.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court that:

(a) the accused must be presumed innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(b) if there is reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused, and he shall be acquitted;

(c) if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree, as to which there is no reasonable doubt; and

(d) the burden of proof to establish the guilt of the accused beyond a reasonable doubt is on the state.

(4) (a) Subsections (1), (2), and (3) do not apply to a court composed of a military judge only, as the military judge of a court determines all questions of law and fact arising during the proceedings. If the accused is convicted, the judge imposes the

sentence.

(b) The military judge of a court shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact are included.

Enacted by Chapter 210, 1988 General Session

**39-6-45. Vote necessary for conviction or other questions -- Tie vote.**

(1) A person may not be convicted of any offense except by a unanimous verdict of the members of the court present at the time the vote is taken.

(2) (a) All other questions decided by the members of a military court are determined by a majority vote. However, a determination to reconsider a finding of guilty, to reconsider a sentence, or to decrease it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(b) A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Amended by Chapter 15, 1989 General Session

**39-6-46. Findings -- Background check prior to sentencing.**

(1) A court shall announce its findings and sentence to the parties as soon as determined.

(2) The court panel may defer sentencing pending an investigation of the background of the accused to determine a just and appropriate sentence.

Enacted by Chapter 210, 1988 General Session

**39-6-47. Military court records.**

(1) (a) Each military court shall maintain a separate record of the proceedings in each case brought before it. The record shall be authenticated by the signature of the military judge.

(b) If the record cannot be authenticated by the military judge due to his death, disability, or absence, it shall be authenticated by the signature of the trial counsel. If the trial counsel is unable to authenticate due to his death, disability, or absence, a member of the court panel shall authenticate the record by his signature.

(c) In a court of only a military judge, the record shall be authenticated by the court reporter under the same conditions that a member of a court would authenticate under this section, if the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may be prescribed by regulations of the governor.

(2) A copy of the record of the proceedings of each court shall be given to the accused as soon as it is authenticated. The expense in preparing and transmitting the

record shall be by regulations prescribed by the governor or the adjutant general.

Enacted by Chapter 210, 1988 General Session

**39-6-48. Cruel and unusual punishments -- Use of irons.**

(1) Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be imposed by any court or inflicted upon any person under this chapter.

(2) Single or double irons may not be used except when necessary for safe custody.

Enacted by Chapter 210, 1988 General Session

**39-6-49. Limits of punishment.**

Punishment directed by a military court for an offense may not exceed limits prescribed under Section 39-1-38.5 or lesser limits the governor may prescribe for the offense.

Amended by Chapter 15, 1989 General Session

**39-6-50. Forfeiture of pay as sentence.**

(1) When a lawful and approved sentence of a court includes a forfeiture of pay or allowances in addition to confinement that is not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority.

(2) A forfeiture may not extend to any pay or allowances acquired before that date.

Enacted by Chapter 210, 1988 General Session

**39-6-51. Confinement as sentence -- Penal institutions.**

(1) A sentence of confinement imposed by a military court, whether or not it includes discharge or dismissal and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the National Guard or in any jail, penitentiary, or prison under the control of the state or of any political subdivision of the state.

(2) If the words "hard labor" are not included in a sentence or punishment imposed by a court martial imposing confinement, the authority executing the sentence or punishment is not prohibited from requiring hard labor as a part of the sentence or punishment.

(3) The keepers, officers, sheriffs, and wardens of penal institutions of the state and its political subdivisions designated by the governor or his designee under Section 39-6-10 shall:

(a) receive persons ordered into confinement before trial and persons committed to confinement by a military court;

(b) confine them according to law; and



(c) receive or confine a person under this chapter without assessing any fee or charge.

Amended by Chapter 9, 1988 Special Session 2

**39-6-52. Finding or sentence -- Error -- Review.**

(1) A finding or sentence of a military court may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm that portion of the finding that includes a lesser included offense.

Enacted by Chapter 210, 1988 General Session

**39-6-53. Trial record forwarded to convening authority.**

After a trial by a military court, the record shall be forwarded to the convening authority, as reviewing authority. Action on the record may be taken by the person who convened the court, a commissioned officer commanding at that time, a successor in command, or by the governor.

Enacted by Chapter 210, 1988 General Session

**39-6-54. Convening authority refers record to SJA -- Opinion.**

The convening authority shall refer the record of each military court to the SJA, who shall submit a written opinion to the convening authority. If the final action of the court is an acquittal of all charges and specifications, the opinion is limited to questions of jurisdiction.

Amended by Chapter 287, 2008 General Session

**39-6-55. Specification dismissal -- No finding of not guilty -- Procedure.**

(1) If a specification before a military court has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) If there is an apparent error or omission in the record or the record shows improper or inconsistent action by a court martial regarding a finding or sentence, that may be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. However, the record may not be returned for:

(a) reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(b) reconsideration of a finding of not guilty of any charge unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of a provision of this chapter; or

(c) increasing the severity of the sentence.

Amended by Chapter 15, 1989 General Session

**39-6-56. Rehearing ordered by convening authority -- Grounds -- Procedure.**

(1) (a) If the convening authority disapproves the findings and sentence of a military court he may, except if there is lack of sufficient evidence in the record to support the findings, order a rehearing, and shall state the reasons for disapproval.

(b) If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2) (a) Each rehearing shall take place before a military court composed of members who are not members of the military court that first heard the case.

(b) At rehearing, the accused may not be tried for any offense of which he was found not guilty by the first military court. A sentence imposed may not exceed or be more severe than the original sentence, unless based on a finding of guilty regarding an offense not considered on the merits in the original proceedings.

Amended by Chapter 15, 1989 General Session

**39-6-57. Convening authority -- Approval of findings and sentence.**

The convening authority acting on the findings and sentence of a military court may approve only findings of guilty and the sentence or part of the sentence he finds correct under the law and fact, in his discretion.

Enacted by Chapter 210, 1988 General Session

**39-6-58. Convening authority review -- Action by governor final -- SJA review -- Appeal of final action.**

(1) When the governor is the convening authority, the governor's action on the review of a record of trial is final.

(2) The state judge advocate shall review the record of trial in each case prior to final action being taken.

(3) The SJA shall make a written review and recommendation on legal issues to the convening authority for its consideration prior to final action in any case.

(4) In a case subject to review by the SJA under this section, the SJA shall submit an opinion regarding any errors committed during the trial and an analysis of the legal effect of the error to the convening authority prior to its affirmation and action regarding the findings and sentence in the case.

(5) The convening authority may affirm only findings of guilty and the sentence or part of the sentence that:

(a) is correct in law and fact; and

(b) should be approved, based on the entire record and the advice of the SJA, and any rebuttal submitted by the accused or defense counsel.

(6) In considering the record, the convening authority may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the testimony of the witnesses.

- (7) If the convening authority sets aside the findings and sentence:
  - (a) a rehearing may be ordered, except when the decision to set aside is based on a lack of sufficient evidence in the record to support the findings; or
  - (b) if a rehearing is not ordered, the charges shall be dismissed.
- (8) (a) Final action approved by the convening authority may be appealed directly to the Utah Court of Appeals.
- (b) Notice of appeal shall be filed within 30 days after the final action has been taken by the convening authority.

Amended by Chapter 287, 2008 General Session

**39-6-59. Military court sentence -- Execution by convening authority.**

- (1) Except under Sections 39-6-17 and 39-6-58, a military court sentence may be ordered executed by the convening authority when approved by him, unless suspended or deferred.
- (2) The convening authority shall, in his discretion, approve the sentence or the part or commuted form of the sentence. After his approval, he may suspend the execution of the sentence.

Enacted by Chapter 210, 1988 General Session

**39-6-61. Probation violation -- Hearing -- Counsel -- Execution of suspended sentence.**

- (1) (a) Before the vacation of the suspension of a military court sentence, the officer holding convening authority jurisdiction over the probationer shall hold a hearing on the alleged violation of probation.
- (b) The probationer shall be represented by counsel at the hearing.
- (2) (a) The record of the hearing and the recommendation of the officer having jurisdiction shall be sent for action to the governor in cases involving a military court sentence of confinement, and to the commanding officer of the unit of the National Guard of which the probationer is a member, in all other cases.
- (b) If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.
- (3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court that imposed the sentence.

Amended by Chapter 12, 1994 General Session

**39-6-62. Petition for new trial -- Grounds.**

Within 30 days after approval by the convening authority of a military court sentence, the accused may petition the convening authority for a new trial on the ground of newly discovered evidence or fraud on the court.

Amended by Chapter 15, 1989 General Session

**39-6-63. Sentence -- Remission or suspension.**

(1) A convening authority may remit or suspend any part or amount of the unexecuted portion of the sentence, including all uncollected forfeitures.

(2) The governor may for good cause shown substitute an administrative form of a discharge for a bad conduct discharge or dismissal executed under a military court sentence.

Enacted by Chapter 210, 1988 General Session

**39-6-64. Sentence set aside -- Rights restored.**

(1) Under rules prescribed by the governor or the adjutant general all rights, privileges, and property affected by an executed portion of a military court sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing.

(2) If a previously executed sentence of bad conduct discharge is not imposed in a new trial, the governor shall substitute a discharge authorized for administrative issue, unless the accused is serving the remainder of his enlistment.

(3) (a) If a previously executed sentence of dismissal is not imposed in a new trial, the governor shall substitute a discharge authorized for administrative issue.

(b) The commissioned officer dismissed by the sentence may be reappointed by the governor to the grade and rank he had attained, if a position is available under applicable organization.

(c) Time between the dismissal and reappointment is considered service for all purposes.

Amended by Chapter 9, 1988 Special Session 2

**39-6-65. Finality of military court judgments.**

(1) The proceedings, findings, and sentence a military court has reviewed and approved under this chapter, and all dismissals and discharges executed under sentences by military court following review and approval under this chapter, are final and conclusive.

(2) Orders publishing the proceedings of military court and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for new trial under Section 39-6-62.

Amended by Chapter 9, 1988 Special Session 2

**39-6-66. Principal defined.**

A person subject to this chapter is a principal, who:

(1) commits an offense punishable under this chapter, or aids, abets, counsels, commands, or procures the commission of the offense; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter.

Enacted by Chapter 210, 1988 General Session

**39-6-67. Accessory after the fact.**

(1) A person subject to this chapter who knows that a person has committed an offense punishable by this chapter may not receive, comfort, or assist the offender to hinder or prevent his apprehension, trial, or punishment.

(2) The person shall be punished as a military court may direct.

Amended by Chapter 9, 1988 Special Session 2

**39-6-68. Conviction of lesser included offense or attempt.**

Any accused person may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

Enacted by Chapter 210, 1988 General Session

**39-6-69. Attempt.**

(1) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(2) A person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military court may direct, unless otherwise specifically prescribed in this chapter.

(3) A person subject to this chapter may be convicted of an attempt to commit an offense although it appears from evidence presented at the court martial that the offense was not completed.

Enacted by Chapter 210, 1988 General Session

**39-6-70. Conspiracy.**

A person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a military court may direct.

Enacted by Chapter 210, 1988 General Session

**39-6-71. Solicitation of desertion, mutiny, or other act of misconduct.**

(1) A person subject to this chapter who solicits or advises one or more other persons to desert in violation of Section 39-6-74 or mutiny in violation of Section 39-6-83 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense. But if the offense solicited or advised is not committed or attempted, the person shall be punished as a military court directs.

(2) A person subject to this chapter who solicits or advises another to commit an

act of misconduct under this chapter shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense. But if the offense solicited or advised is not committed, he shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-72. Fraudulent enlistment, appointment, or separation.**

A person shall be punished as a military court directs, who:

- (1) procures his own enlistment or appointment in the National Guard by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
- (2) procures his own separation from the National Guard by knowingly false representation or deliberate concealment as to his eligibility for that separation.

Enacted by Chapter 210, 1988 General Session

**39-6-73. Unlawful enlistment, appointment, or separation of another.**

A person subject to this chapter who effects an enlistment or appointment in, or a separation from, the National Guard of any person when he knows that the enlistment, appointment, or separation is prohibited by law, regulation, or order, shall be punished as a military court may direct.

Enacted by Chapter 210, 1988 General Session

**39-6-74. Desertion.**

- (1) A member of the National Guard is guilty of desertion who:
  - (a) without authority leaves or remains absent from his unit, organization, or place of duty with intent to remain away from it permanently;
  - (b) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or
  - (c) without being regularly separated from one of the forces of the National Guard enlists or accepts an appointment in the same or another one of the armed forces of the National Guard without fully disclosing the fact that he has not been regularly separated.
- (2) A commissioned officer of the National Guard who, after tender of his resignation and before notice of its acceptance, quits his post or duties without leave and with intent to remain away permanently is guilty of desertion.
- (3) A person found guilty of desertion or attempt to desert shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-75. Absence without leave.**

A person subject to this chapter shall be punished as a military court directs, who without authority:

- (1) fails to go to his appointed place of duty at the time prescribed;
- (2) leaves his appointed place of duty, or is guilty of desertion;
- (3) absents himself or remains absent from his unit, organization, or place of duty where he is required to be at the time prescribed.

Enacted by Chapter 210, 1988 General Session

**39-6-76. Missing movement.**

A person subject to this chapter who through neglect or design misses the movement of an aircraft or unit with which he is required in the course of duty to move shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-77. Contempt toward officials.**

A person subject to this chapter who uses contemptuous words against the president of the United States, the governor, or the Legislature, or the governor or legislature of any state, territory, commonwealth, or possession where that person is serving, shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-78. Disrespect toward superior officer.**

A person subject to this chapter who acts with disrespect toward his superior commissioned officer shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-79. Assault or willful disobedience of an officer.**

A person subject to this chapter shall be punished as a military court directs, who:

- (1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or
- (2) willfully disobeys a lawful command of his superior commissioned officer.

Enacted by Chapter 210, 1988 General Session

**39-6-80. Assault or willful disobedience of subordinate officer.**

A warrant officer or enlisted member shall be punished as a military court directs who:

- (1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;
- (2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or
- (3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the

execution of his office.

Enacted by Chapter 210, 1988 General Session

**39-6-81. Failure to obey order or regulation.**

A person subject to this chapter shall be punished as a military court directs who:

- (1) violates or fails to obey any lawful general order or regulation;
- (2) knowingly of any other lawful order issued by a member of the National Guard, which it is his duty to obey, fails to obey the order; or
- (3) is derelict in the performance of his duties.

Enacted by Chapter 210, 1988 General Session

**39-6-82. Cruelty -- Maltreatment.**

A person subject to this chapter who is cruel toward, oppressive toward, or maltreats any person subject to his orders shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-83. Mutiny -- Sedition.**

(1) A person subject to this chapter shall be punished as a military court directs, who:

(a) with intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty, or creates any violence or disturbance is guilty of mutiny;

(b) with intent to cause the overthrow or destruction of lawful civil authority creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition; and

(c) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition he knows or has reason to know is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a military court directs.

Amended by Chapter 9, 1988 Special Session 2

**39-6-84. Breaking arrest or confinement.**

A person subject to this chapter who resists apprehension, breaks arrest, or escapes from physical restraint lawfully imposed, shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-85. Releasing prisoner without proper authority -- Allowing escape.**



A person subject to this chapter who, without authority, releases any prisoner committed to his charge, or who through neglect or design allows the prisoner to escape, shall be punished as a military court directs, whether or not the prisoner was committed in strict compliance with law.

Enacted by Chapter 210, 1988 General Session

**39-6-86. Unlawful detention.**

A person subject to this chapter who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-87. Delay in disposition of case or noncompliance with chapter.**

A person subject to this chapter shall be punished as a military court directs who:

- (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or
- (2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused.

Enacted by Chapter 210, 1988 General Session

**39-6-88. Forcing a safeguard.**

A person subject to this chapter who forces a safeguard shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-89. Signing a false record.**

A person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-90. Sale, waste, or destruction of military property.**

A person subject to this chapter shall be punished as a military court directs who, regarding any military property of the United States or of the state, without authority:

- (1) sells or otherwise disposes of it;
- (2) willfully or through neglect damages, destroys, or loses it; or
- (3) willfully or through neglect suffers it to be lost, damaged, destroyed, sold, or wrongfully disposed of.

Amended by Chapter 9, 1988 Special Session 2

**39-6-91. Waste or destruction of nonmilitary property.**

A person subject to this chapter who while in a duty status willfully or recklessly wastes, spoils, or otherwise willfully and unlawfully destroys or damages any property other than military property of the United States or of the state shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-92. Improper hazarding of vessel.**

(1) A person subject to this chapter who willfully and unlawfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the National Guard shall be punished as a military court directs.

(2) A person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the National Guard shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-93. Intoxicated or reckless driving.**

A person subject to this chapter who operates any vehicle in violation of Section 41-6a-502, or in violation of Section 41-6a-528, shall be punished as a military court directs.

Amended by Chapter 2, 2005 General Session

**39-6-94. Intoxicated on duty -- Sentinel or lookout.**

(1) A person subject to this chapter, other than a sentinel or lookout, who is found intoxicated on duty shall be punished as a military court directs.

(2) A sentinel or lookout who is found intoxicated or sleeping on his post, or leaves it before he is regularly relieved, shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-95. Malingering.**

A person subject to this chapter shall be punished as a military court directs who, for the purpose of avoiding work, duty, or service in the National Guard:

(1) feigns illness, physical disablement, mental or emotional difficulties, or mental derangement; or

(2) intentionally injures himself.

Enacted by Chapter 210, 1988 General Session

**39-6-96. Riot -- Breach of peace.**

A person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-97. Provoking speeches or gestures.**

A person subject to this chapter who uses provoking or derogatory words or gestures toward any other person subject to this chapter shall be punished as a military court may direct.

Enacted by Chapter 210, 1988 General Session

**39-6-98. Theft -- Wrongful conversion.**

(1) A person subject to this chapter who unlawfully takes, obtains, or withholds, by any means, from the possession of the owner or from any other person any money, personal property, or article of value of any kind:

(a) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of theft; or

(b) with intent to temporarily deprive or defraud another person of the use and benefit of property or to convert the property to his own use or the use of any other person other than the owner, is guilty of wrongful conversion.

(2) A person found guilty of theft or wrongful conversion shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-99. Aggravated arson -- Arson.**

A person subject to this chapter who willfully and maliciously burns or sets on fire:

(1) an inhabitable dwelling, or any other structure, movable or immovable, and the person knows or has reason to know that at the time there is a human being within, is guilty of aggravated arson and shall be punished as a military court directs; and

(2) the property of another except under Subsection (1), is guilty of arson and shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-100. Extortion.**

A person subject to this chapter who communicates threats to another person intending to obtain anything of value or to influence any acquittal, advantage, or immunity is guilty of extortion and shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-101. Assault -- Aggravated assault.**

(1) A person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is completed, is guilty of assault and shall be punished as a military court directs.

(2) A person subject to this chapter is guilty of aggravated assault and shall be punished as a military court directs, who:

(a) commits an assault with a dangerous weapon or other means or force likely to produce death or serious bodily harm; or

(b) commits an assault and intentionally inflicts serious bodily harm with or without using a weapon.

Enacted by Chapter 210, 1988 General Session

**39-6-102. Housebreaking.**

A person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense is guilty of housebreaking and shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-103. Perjury.**

A person subject to this chapter who, in a civil judicial proceeding or in a judicial proceeding conducted by the National Guard, willfully gives, upon a lawful oath or in any form allowed by law as a substitute for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-104. Fraudulent claim against government.**

(1) A person subject to this chapter shall be punished as a military court directs who, knowing it to be false or fraudulent:

(a) makes any claim against the United States, the state, or any officer of either of them; or

(b) presents to any person in the civil or military service, for approval or payment, any claim against the United States, the state, or any officer.

(2) A person subject to this chapter shall be punished as a military court directs, who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer of either of them:

(a) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) forges or counterfeits any signature upon any writing or other paper, or uses a signature knowing it is forged or counterfeited.

(3) A person subject to this chapter shall be punished as a military court directs who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the National Guard or any of its forces, knowingly delivers to any person authorized to receive it, any amount less than that for which he receives a certificate or

receipt.

(4) A person subject to this chapter shall be punished as a military court directs, who, authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the National Guard or any of its forces, makes or delivers the writing to any person without having full knowledge of the truth of the statements contained in it and with intent to defraud the United States or the state.

Enacted by Chapter 210, 1988 General Session

**39-6-105. Conduct unbecoming an officer.**

A commissioned officer who is convicted of conduct unbecoming an officer and a courteous and honorable person shall be punished as a military court directs.

Enacted by Chapter 210, 1988 General Session

**39-6-106. Acts discrediting National Guard.**

All acts of disorder and neglect prejudicing the good order and discipline in the National Guard, all conduct bringing discredit upon the National Guard, of which persons subject to this chapter may be guilty, shall be considered in a military court, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

Enacted by Chapter 210, 1988 General Session

**39-6-107. Courts of inquiry.**

(1) Courts of inquiry to investigate any matter may be convened by the governor or his designee, whether or not the persons involved have requested the inquiry.

(2) A court of inquiry consists of three or more commissioned officers. For each court, the convening authority shall also appoint counsel for the court.

(3) (a) A person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. A person subject to this chapter or employed by the National Guard, who has a direct interest in the subject of inquiry, has the right to be designated as a party upon request to the court.

(b) A person designated as a party shall be given due notice and has the right to be present, represented by counsel, to have counsel appointed, to cross examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of a court of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before a court of inquiry, under the same provisions as for a military court.

(7) A court of inquiry shall make findings of fact but may not express opinions or make recommendations, unless required to do so by the convening authority.

(8) (a) A court of inquiry shall keep a record of its proceedings, which shall be

authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority.

(b) If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be authenticated by a member in lieu of the counsel.

Amended by Chapter 110, 1993 General Session

**39-6-108. Execution of military court processes and sentences.**

The processes and sentences of the National Guard in its military court, when the guard is not in federal service, shall be executed by the civil officers prescribed by state law.

Enacted by Chapter 210, 1988 General Session

**39-6-109. Military court -- Authority -- Processes and mandates.**

(1) A military court may issue all processes and mandates necessary to carry into effect the court's authority. The court may issue subpoenas duces tecum and enforce by attachment the attendance of witnesses and production of books and records, when they are in the state, and the courts are sitting in the state.

(2) The processes and mandates:

(a) may be issued by a military court judge or the president of other military courts;

(b) may be directed to and executed by the military police assigned to the court, or any peace officer; and

(c) shall be in a form prescribed by regulations issued under this chapter.

(3) (a) All officers to whom the processes or mandates are directed shall execute them and make return of their acts according to the requirements of the documents.

(b) Except where otherwise provided under this chapter, an officer may not demand or require payment of any fee or charge for receiving, executing, or returning a process or mandate, or for any service in connection with either document.

Enacted by Chapter 210, 1988 General Session

**39-6-110. Fines.**

(1) Fines may be paid to a military court or to an officer executing its process. The amount of the fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or to become due to him, until the fine is completely paid.

(2) Any sum deducted shall be turned in to the military court which imposed the fine and shall be paid by the officer receiving it under the same procedure as for fines and other money collected under a sentence of a military court.

(3) A fine or penalty imposed by a military court upon an officer or enlisted person shall be paid by the officer collecting it to the state General Fund, within 30 days.

Enacted by Chapter 210, 1988 General Session

**39-6-111. Action by military court -- Protection from prosecution.**

An action or proceeding may not be prosecuted against the convening authority or a member of a military court, or an officer or person acting under its authority or reviewing its proceedings, because of the approval, imposition, or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

Enacted by Chapter 210, 1988 General Session

**39-6-112. Presumption of military court jurisdiction.**

The jurisdiction of military courts established under this chapter shall be presumed. The burden of proof rests on any person claiming the court does not have jurisdiction in any action or proceeding.

Enacted by Chapter 210, 1988 General Session

**39-6-113. Jurisdiction over offenses.**

A person may not be tried or punished for any offense under Sections 39-6-66 through 39-6-106, unless the offense was committed while he was in a duty status that includes but is not limited to annual training, inactive duty for training, drill, duty under Title 10 or 32, United States Code, or while on state active duty.

Amended by Chapter 9, 1988 Special Session 2

**39-6-114. Chapter interpretation -- Federal law.**

Cases from the federal Court of Appeals for the Armed Forces and the federal Courts of Criminal Appeals that interpret provisions of the Uniform Code of Military Justice shall be followed in interpretation of Section 39-6-24 and Sections 39-6-66 through 39-6-106, where appropriate and applicable.

Amended by Chapter 79, 1996 General Session

**39-7-101. Short title.**

This chapter is known as the Utah Service Members' Civil Relief Act.

Enacted by Chapter 306, 1997 General Session

**39-7-102. Definitions.**

(1) "Dependent" means the spouse and children of a service member or any other person dependent upon the service member for support.

(2) "Interest" includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.

(3) "Military service" means active, full-time service with a recognized military

unit called into service by the governor for at least 30 days.

(4) "Service member" means any member of the National Guard serving on active military service in an organized military unit.

Enacted by Chapter 306, 1997 General Session

**39-7-103. Application of this chapter.**

(1) This chapter shall apply to all service members on military orders who are unable to perform, continue, or complete civil obligations due to military service.

(2) This chapter does not apply to military service performed under orders issued pursuant to Title 10 or Title 32, United States Code.

(3) Proper application of this chapter shall suspend or postpone actions upon those obligations until 60 days after discharge from active, full-time, military service.

Enacted by Chapter 306, 1997 General Session

**39-7-104. Reopening default judgments.**

(1) A default judgment rendered in any civil action against a service member during a period of military service or within 30 days after termination of the military service may be set aside if:

(a) it appears that the person was prejudiced by reason of his military service in making a defense to the action;

(b) application by the person or his legal representative is made to the court rendering the judgment not later than 60 days after the termination of the military service; and

(c) the application provides enough facts that it appears that the defendant has a meritorious or legal defense to the action or some part of the action.

(2) Vacating, setting aside, or reversing any judgment because of any of the provisions of this chapter may not impair any right or title acquired by any bona fide purchaser for value under the judgment.

Enacted by Chapter 306, 1997 General Session

**39-7-105. Stay of proceedings.**

(1) If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member and in the conduct of the proceedings may be adversely affected by his military service, the court may, on its own motion, stay the proceedings.

(2) The court may stay the proceedings if the service member or another person on his behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct his defense is not materially affected by reason of his military service.

Enacted by Chapter 306, 1997 General Session

**39-7-106. Fines and penalties on contracts.**

(1) If compliance with the terms of a contract is stayed pursuant to this chapter,



a fine or penalty may not accrue by reason of failure to comply during the period of the stay.

(2) If a service member has not obtained a stay and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in military service when the penalty was incurred and his ability to pay or perform was materially impaired.

Enacted by Chapter 306, 1997 General Session

**39-7-107. Exercise of rights not to affect future financial transactions.**

Application by a service member in military service for, or receipt of, a stay, postponement, or suspension under the provisions of this chapter in the payment of any fine, penalty, insurance premium, or other civil obligation or liability may not be used for any of the following:

(1) a determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms;

(2) with respect to a credit transaction between a creditor and a service member:

(a) a denial or revocation of credit by the creditor;

(b) a change by the creditor in the terms of an existing credit arrangement; or

(c) a refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested; or

(3) an adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

Enacted by Chapter 306, 1997 General Session

**39-7-108. Stay of execution of judgment.**

Unless the court determines on the record that the ability of the service member to comply with the judgment or order entered or sought is not materially affected by reason of his military service, the court may, on its own motion, or upon application to it by the service member or another person on his behalf:

(1) stay the execution of any judgment or order entered against the service member, as provided in this chapter; and

(2) vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this chapter.

Enacted by Chapter 306, 1997 General Session

**39-7-109. Duration of stays.**

(1) Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this chapter may be ordered for the period of military service plus 60 days after its termination or any part of that time period.

(2) Where the service member in military service is a codefendant with others, the plaintiff may, with leave of the court, proceed against the others.

Enacted by Chapter 306, 1997 General Session

**39-7-110. Statutes of limitations affected by military service.**

The period of military service is not included in computing any period limited by law, rule, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding has accrued prior to or during the period of military service.

Enacted by Chapter 306, 1997 General Session

**39-7-111. Maximum rate of interest.**

An obligation or liability bearing interest at a rate in excess of six percent per year incurred by a service member in military service before his entry into military service may not, during any part of the period of military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court and upon application to the court by the obligee, the ability of the service member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of his service. The court may make any order in the action that, in its opinion, is just.

Enacted by Chapter 306, 1997 General Session

**39-7-112. Dependent benefits.**

Dependents of a service member in military service are entitled to the benefits accorded to service members in military service under the provisions of Sections 39-7-113 through 39-7-117 upon application to a court, unless, in the opinion of the court, the ability of the dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the service member upon whom the applicants are dependent.

Enacted by Chapter 306, 1997 General Session

**39-7-113. Eviction or distress of dependents.**

(1) A landlord may not evict or take and hold property of a service member or the service member's dependents for nonpayment of rent during the period of military service if the rent on the premises occupied by the service member or the service member's dependents is less than \$2,400 per month unless a court allows it after application to the court and an order granted in an action or proceeding affecting the right of possession.

(2) In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three months, or make any order the court determines to be reasonable and just under the circumstances, unless the court finds that the ability of the tenant to pay the agreed rent is not materially affected by

reason of the service member's military service.

(3) When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises similar to that granted service members in military service in Sections 39-7-114 through 39-7-116 to the extent and for any period as the court determines to be just and reasonable under the circumstances.

(4) Any person who knowingly takes part in any eviction or distress otherwise than as provided in Subsection (1), or attempts to do so, is guilty of a misdemeanor.

(5) The governor is empowered to order an allotment of the pay of a service member in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

Amended by Chapter 122, 2008 General Session

#### **39-7-114. Installment contracts.**

(1) The creditor of a service member who, prior to entry into military service, has entered into an installment contract for the purchase of real or personal property may not terminate the contract or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.

(2) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the contract is not materially affected by reason of his military service:

(a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(b) order a stay of the proceedings on its own motion, or on motion by the service member or another person on his behalf; or

(c) make any other disposition of the case it considers to be equitable to conserve the interests of all parties.

(3) Any person who knowingly repossesses property which is the subject of this section other than as provided in Subsection (1) is guilty of a misdemeanor.

Enacted by Chapter 306, 1997 General Session

#### **39-7-115. Mortgage foreclosures.**

(1) The creditor of a service member who, prior to entry into military service, has entered into a mortgage contract with the service member or his dependent for the purchase of real or personal property may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.

(2) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of his military service:

(a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(b) order a stay of the proceedings on its own motion, or on motion by the service member or another person on his behalf; or

(c) make any other disposition of the case as it considers to be equitable to conserve the interests of all parties.

(3) In order to come within the provisions of this section, the service member or dependent shall establish the following:

(a) that relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;

(b) that the obligation originated prior to the service member's entry into military service;

(c) that the property was owned by the service member or his dependent prior to the commencement of military service; and

(d) that the property is still owned by the service member or his dependent at the time relief is sought.

(4) Any person who knowingly forecloses on property which is the subject of this section other than as provided in Subsection (1) is guilty of a misdemeanor.

Enacted by Chapter 306, 1997 General Session

**39-7-116. Application for relief.**

(1) A person may, at any time during his period of military service or within 60 days after discharge or termination, apply to a court for relief in respect of any obligation or liability incurred by the person prior to his period of military service.

(2) The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of the obligation or liability has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of military service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as the court may consider just.

(b) In the case of any other obligation or liability, a stay of the enforcement during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of the period of military service, for a period of time equal to the period of military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or the date of application, in equal periodic installments during the extended period at the rate of interest prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.

(3) When any court has granted a stay as provided in this section, a fine or penalty may not be accrued for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

Enacted by Chapter 306, 1997 General Session

**39-7-117. Storage liens.**

(1) A person may not exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a service member in military service during the service member's period of military service and for 60 days after termination or discharge, except upon an order previously granted by a court upon application and a return to the court made and approved by the court. In the proceeding the court may, after hearing the matter, on its own motion, and shall, on application to it by the service member in military service or another person on his behalf, unless in the opinion of the court the ability of the service member to pay the storage charges due is not materially affected by reason of his military service:

(a) stay the proceedings as provided in this chapter; or  
(b) make any other disposition the court considers to be equitable to conserve the interest of all the parties.

(2) The enactment of the provisions of this section may not be construed in any way as affecting or limiting the scope of Section 39-7-115.

(3) Any person who knowingly takes any action contrary to the provisions of this section, or attempts to do so, is guilty of a misdemeanor.

Enacted by Chapter 306, 1997 General Session

**39-7-118. Professional liability protection for certain persons ordered to active duty in the armed forces.**

(1) This section applies to a person who:  
(a) is ordered to military service, other than training; and  
(b) immediately before receiving the order to military service:  
(i) was engaged in the furnishing of health-care services or other services determined by rule to be professional services; and  
(ii) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the service member during the period of the service member's active duty unless the premiums are paid for coverage for that period.

(2) Coverage of a person referred to in Subsection (1) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with Subsection (3) upon receipt of a written request by the service member.

(3) A professional liability insurance carrier:  
(a) may not require that premiums be paid by or on behalf of a service member for any professional liability insurance coverage suspended pursuant to Subsection (2); and

(b) shall refund any amount paid for coverage for the period of the suspension or, upon the election of the service member, apply the amount for the payment of any

premium becoming due upon the reinstatement of the coverage.

(4) A professional liability insurance carrier is not liable with respect to any claim that is based on professional conduct, including any failure to take any action in a professional capacity of a person that occurs during a period of suspension of that person's professional liability insurance under this section. For the purposes of the preceding sentence, a claim based upon the failure of a professional to make adequate provision for patients to be cared for during the period of the professional's military service is considered an action or failure to take action before the beginning of the period of suspension of professional liability insurance under this section, except in a case in which professional services were provided after the date of the beginning of the period.

(5) (a) Professional liability insurance coverage suspended in the case of any service member pursuant to Subsection (2) shall be reinstated by the insurance carrier on the date on which the service member transmits to the insurance carrier a written request for reinstatement.

(b) The request of a service member for reinstatement shall be effective only if the service member transmits the request to the insurance carrier within 30 days after the date on which the service member's military service is terminated. The insurance carrier shall notify the person of the due date for payment of the insurance premium. The premium shall be paid by the person within 30 days after receipt of the notice.

(6) The period for which professional liability insurance coverage shall be reinstated for a service member under this section may not be less than the balance of the period for which coverage would have continued under the policy if the coverage had not been suspended.

(7) An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any service member for the minimum period of the reinstatement of coverage required under Subsection (5) to an amount greater than the amount chargeable for the coverage for the period before the suspension, except to the extent of any general increase in the premium amounts charged by that carrier for the same professional liability coverage for other persons similarly covered by the same insurance during the period of the suspension.

(8) This section does not:

(a) require a suspension of professional liability insurance coverage for any person who is not a person referred to in Subsection (1) and who is covered by the same professional liability insurance as a person referred to in Subsection (1); or

(b) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(9) A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a person whose professional liability insurance coverage has been suspended under Subsection (2) shall be stayed until the end of the period of the suspension if:

(a) the action was commenced during the period of suspension;

(b) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(c) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional

liability negligence or other professional liability of the person.

Enacted by Chapter 306, 1997 General Session

**39-7-119. Rulemaking authority.**

The Adjutant General may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter.

Amended by Chapter 382, 2008 General Session

**39-8-101. Definitions.**

As used in this chapter:

(1) "Active duty" means that a servicemember is activated and deployed outside the state pursuant to federal orders under Title 10 or Title 32, United States Code.

(2) "Servicemember" means a resident of this state who is a member of the Utah National Guard or a reserve component of the United States Armed Forces in this state.

Enacted by Chapter 333, 2006 General Session

**39-8-102. Counseling program.**

(1) There is created within the Department of Human Services, a counseling program for servicemembers and the families of servicemembers following demobilization from active service.

(2) The Department of Human Services shall develop and, within the appropriations of the Legislature, implement a statewide counseling program for the servicemember and the servicemember's immediate family.

(3) The program shall:

(a) be available to the servicemember and the servicemember's immediate family:

(i) 60 days prior to the servicemember's return or demobilization; and

(ii) until one year from the date of return or demobilization, whichever is later;

and

(b) include counseling services designed to facilitate the reintegration of the servicemember back into civilian and family life.

(4) The Department of Human Services shall seek input from the Utah National Guard regarding the content of the counseling program.

Enacted by Chapter 333, 2006 General Session